

STATE OF MINNESOTA
IN SUPREME COURT
C9-85-1506

OFFICE OF
APPELLATE COURTS
FILED
AUG 12 1985

WAYNE TSCHIMPERLE
CLERK

In re Public Hearing on
Vacancies in Judicial
Positions in the
Fifth Judicial District

ORDER *

WHEREAS, the provisions of Minnesota Statutes Section 2.722, Subd. 1a (1985), prescribe certain procedures to determine whether a judicial position which is vacated by the retirement of an incumbent judge should be continued, transferred or abolished;

WHEREAS, the provisions of the above statute require the Supreme Court to consult with attorneys and judges in the affected judicial district to determine whether the vacant office is necessary for effective judicial administration, and, after making such determination, to decide whether to certify the vacancy to the Governor within 90 days after receiving notice of the retirement from the Governor; and

WHEREAS, Governor Rudy Perpich has notified the Supreme Court on July 22, 1985, that a vacancy in the Fifth Judicial District will occur as a consequence of the retirement of Judge L. J. Irvine; and

WHEREAS, Governor Rudy Perpich has notified the Supreme Court on August 1, 1985, that a vacancy in the Fifth Judicial District will occur as a consequence of the retirement of Judge Walter H. Mann; and

WHEREAS, the Supreme Court intends to consider weighted caseload information, which indicates that there currently exists a surplus of judicial positions in the Fifth Judicial District, in determining whether to certify vacancies to the Governor in either or both of the above judicial positions; and

WHEREAS, the Supreme Court wishes to hold a public hearing in the Fifth Judicial District and to receive relevant supplemental information regarding judges and judicial resource needs from attorneys and other interested persons at that time;

NOW, THEREFORE, IT IS HEREBY ORDERED that a public hearing be held in the District Courtroom in the Brown County Courthouse, New Ulm, Minnesota, at 10:00 A.M., on September 13, 1985;

IT IS FURTHER ORDERED that persons wishing to have the Supreme Court consider information concerning the continuation of the two judicial vacancies described above shall file a written summary of such information and, if applicable, their desire to make an oral presentation at the hearing, with the Supreme Court at least five days before the hearing, at the following address: Clerk of Appellate Courts, 230 State Capitol, St. Paul, Minnesota 55155.

IT IS FURTHER ORDERED that persons who wish to obtain information concerning the weighted caseload analysis and its application to the two vacancies in the Fifth Judicial District shall direct their inquiries to: Debra L. Dailey, 40 North Milton Street, Suite 201, St. Paul, Minnesota 55104.

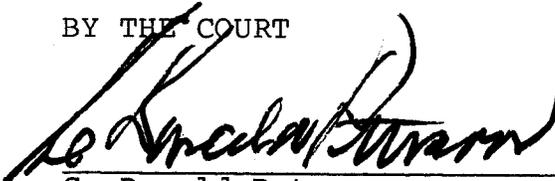
Dated: August 8, 1985

OFFICE OF
APPELLATE COURTS
FILED

AUG 9 1985

WAYNE TSCHIMPERLE
CLERK

BY THE COURT



C. Donald Peterson
Senior Associate Justice

STATE OF MINNESOTA
FIFTH JUDICIAL DISTRICT

IN THE SUPREME COURT

OFFICE OF
APPELLATE COURTS
FILED

AUG 15 1985

PETITION FOR POSTPONEMENT
OF HEARING TO DATE CERTAIN

WAYNE TSCHIMPERLE
CLERK

NOW COMES THE Honorable Richard L. Kelly, Chief Judge of the Fifth Judicial District, for and on behalf of all of the judges of said district, who says,

WHEREAS The Honorable Douglas K. Amdahl, Chief Justice of the Minnesota Supreme Court has scheduled a "Sunset Hearing" pursuant to Chapter 13, Section 58, Minnesota Statutes, as amended, in re: the vacancies caused by retirement of District Court Judges Irvine and Mann; said hearing is scheduled for August 29, 1985, and

WHEREAS a criminal justice seminar is being conducted on August 26, 27, 28, 1985, at which many judges and attorneys will be in attendance, and

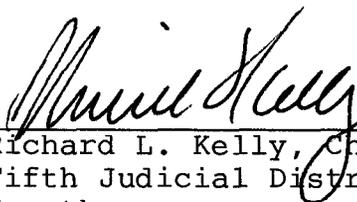
WHEREAS the Labor Day holiday will be September 2, 1985, at which many judges and attorneys will be away from their offices, and

WHEREAS the Minnesota Judges Association will be conducting their annual meeting September 4,5,6, 1985, and

WHEREAS substantial knowledge and information can reasonably be anticipated from the persons who will be participating in the forgoing professional and family activities.

NOWTHEREFORE the Judges of the Fifth Judicial District who respectfully pray the "Sunset Hearing" be rescheduled to September 12, 1985, or some other time as deemed appropriate by the Court.

Dated August 2, 1985


Richard L. Kelly, Chief Judge
Fifth Judicial District
Courthouse
New Ulm, MI 56073

DISTRICT COURT OF MINNESOTA
FIFTH JUDICIAL DISTRICT
FAIRMONT
56031

OFFICE OF
APPELLATE COURTS
FILED

AUG 20 1985

WAYNE TSCHIMPERLE
CLERK

CHAMBERS
L. J. IRVINE
JUDGE

August 16, 1985

Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

e 9-85-1506

Re: "Sunset" Law Regarding Judgeships

Dear Mr. Tschimperle:

I have already stated my position with regard to the "Sunset" Law enacted in the recent special session of the legislature. I did so in a letter to the Governor, of which I believe the Supreme Court has received a copy.

However, in conformity with the recent directive of the Supreme Court, I am hereby giving notice that I intend to be present at the public hearing on the matter on September 13, 1985, and as the person best acquainted with the situation from the judges' standpoint, I will be available to answer any questions that may arise and possibly to make further comments in line with those I have already made in my letter.

If possible, I would appreciate your advising me as to the person or persons who are going to present the case for vacating my position after I retire.

Yours very truly,

L. J. Irvine
L. J. Irvine

LJI:acj



CHAMBERS
L.J. IRVINE
JUDGE

DISTRICT COURT OF MINNESOTA
FIFTH JUDICIAL DISTRICT
FAIRMONT
56031

August 1, 1985

The Honorable Rudy Perpich
Governor of the State of Minnesota
State Capitol
St. Paul, Minnesota 55155

Dear Governor Perpich:

Although my retirement is mandatory at the end of October, 1985, the month in which I will become 70 years of age, pursuant to Minn. Stat. 490.121, subd. 12, and, although you have known about it for several months, I herewith and hereby apply for retirement as of October 31, 1985, also as required by statute.

I am sure you are aware of the "Sunset" law relating to judgeships, having signed the bill into law after the recent special session of the legislature. I hope that law will not be applied to the position I am vacating so that I will not be replaced.

The most recent caseload study indicates that there is a necessity for five District Judges in the 15 county Fifth Judicial District, which there are. The same study shows that there are from three to six too many County Court judges in the district, some of whom will retire before too long.

Rather than leaving my position vacant, which would mean that several County Court judges would have to be assigned to District Court work in addition to their County Court work, I believe that a more orderly way of handling the situation would be to fill my position and to apply the "Sunset" law to County Court judgeships as they become vacant, until the proper number is reached.

Another possibility, of course, would be to appoint a County Court judge to replace me and to leave the County Court judgeship vacant or move it to some other district. However, I am not aware of any County Court judge in this area who is interested in replacing me.

I know that the decision is not yours to make, but I would appreciate your urging the Supreme Court not to apply the "Sunset" law to my position. I know that I have been one of the busiest judges in the State for thirty years, and I believe that failure to maintain the present number of District judges in this district would result in a serious and unnecessary disruption of the administration of justice in this area.

Yours very truly,


L. J. Irvine

LJI:acj



STATE OF MINNESOTA

OFFICE OF THE GOVERNOR

ST. PAUL 55155

RUDY PERPICH
GOVERNOR

RECEIVED
AUG 8 1985
Ans'd.....

August 6, 1985

Honorable L. J. Irvine
Judge, District Court of Minnesota
Fifth Judicial District
Fairmont, MN 56031

Dear Judge Irvine:

Your letter requesting retirement at the end of October, 1985 has been received in the Governor's Office. A letter from Governor Perpich granting your request, along with a copy of his order to the Secretary of State, will be processed the first week in September.

In the meantime, we are forwarding a copy of your letter to the Supreme Court for their information.

Very truly yours,

SHIRLEY FOOTH
Staff Assistant, Judicial
Office of the Governor

cc: Judy Rehak



THE SUPREME COURT OF MINNESOTA
230 STATE CAPITOL
SAINT PAUL, MINNESOTA 55155

SUE K. DOSAL
STATE COURT ADMINISTRATOR

(612) 296-2474

August 23, 1985

The Honorable L. J. Irvine
Judge of District Court
Fifth Judicial District
Martin County Courthouse
Fairmont, MN 56031

Dear Judge Irvine:

Mr. Tschimperle has referred to me your letter of August 16, 1985 concerning the Supreme Court's public hearing on the impending Fifth District judicial vacancies. Mr. Dale Good, Director of Information Systems and formerly the director of statistics and research for the Office of the State Court Administrator, will be providing a description of the weighted caseload study and a presentation of its indication of judicial need in the Fifth Judicial District during the September 13, 1985 public hearing.

Sincerely yours,

Sue K. Dosal
State Court Administrator

SKD:go

8-21

Henry J. Kalis

District 29B
Blue Earth-Faribault-Freeborn-
Martin-Waseca Counties

Committees:

- Appropriations
- Agriculture, Transportation and
Semi-State Division
- Subcommittee on Claims
- Agriculture
- Financial Institutions and Insurance



**Minnesota
House of
Representatives**

David M. Jennings, Speaker

OFFICE OF
APPELLATE COURTS
FILED

AUG 21 1985

**WAYNE TSCHIMPERLE
CLERK**

August 20, 1985

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

To Whom It May Concern:

It is my wish to have the opportunity to testify on Friday, September 13, 1985, regarding the continuation of the two judicial vacancies in the Fifth Judicial District.

I will be commenting on the legislation which was passed by the 1985 special session as well as the effect the elimination of these positions would have on the Fifth Judicial District.

Sincerely,

A handwritten signature in cursive script that reads "Henry J. Kalis".

Henry J. Kalis
State Representative

kb



8-22-85

ROBERT R. MAUNU

Attorney at Law

P.O. BOX 762
224 SOUTH HIAWATHA
PIPESTONE, MINNESOTA 56164
TELEPHONE (507) 825-5848

August 21, 1985

OFFICE OF
APPELLATE COURTS
FILED

AUG 22 1985

WAYNE TSCHIMPERLE
CLERK

Mr. Wayne Tschimperle
Clerk of Appellate Courts
230 State Capital
St. Paul, MN 55155

Re: Judicial Vacancies
Fifth Judicial District

Dear Mr. Tschimperle:

This is for the purpose of discussing the vacancies created by the retirements of Judges Irvine and Mann which will be considered at the hearing to be held at the Courthouse in New Ulm, Minnesota, on Friday, September 13, 1985, at 10:00 A. M. Needless to say, the outcome of this hearing will have a substantial impact on the court system in the Fifth Judicial District.

It is my opinion that the elimination of one or both of the vacancies will result in a reduction in the efficiency and quality of justice in this District which will last indefinitely. Following are some of the reasons supporting my opinion on this issue.

MINNESOTANS ARE ENTITLED TO SPEEDY JUSTICE: One major problem is delay. The Minnesota Court of Appeals was created to alleviate delay, among other things. To now reduce the number of trial court judges is not consistent with such recent efforts to improve the system by eliminating delay.

YOU CAN'T GET JUSTICE IF YOU CAN'T GET TO COURT: In rural areas, such as the Fifth Judicial District covers, judges must operate outside of their own chambers much of the time. It would be impracticable, if not impossible, to bring other files along to work on while out of town. Thus, the time away results in wasted time that cannot be avoided. If a Minnesota resident does not live in or near the city in which the judges chambers are located, he must spend extra time and money to get where the justice is. We need judges that are located where the people are.

A JUDGE SHOULD HAVE THE TIME TO MAKE GOOD DECISIONS: Elimination of the vacancies will result in larger work loads for each judge and more than delay, it would inevitably affect the quality of Court decisions. By hearing too many

Mr. Wayne Tschimperle
Page Two
August 21, 1985

Subject: Judicial Vacancies
Fifth Judicial District

cases, a judge simply cannot give each case as much time and attention as is necessary. This would not be the judge's fault, but rather the system's fault. Consequently, it would result in an injustice for all concerned.

THE WEIGHTED ANALYSIS STUDY IS FLAWED: The study does not adequately reflect travel expenses, travel time loss, time loss for law enforcement and the bar, their parties and witnesses. The study fails to consider wasted time in conducting court outside the judges own chambers. The study does not adequately consider the availability of law clerks available in the Fifth Judicial District as opposed to the Metro area, the specialization of judges in the Metro area nor the size of law firms with more available attorneys in the Metro area.

CONSEQUENCES OF ELIMINATION OF THE VACANCIES: Elimination of one or both of the vacancies would result in an inadequate system of justice in the Fifth Judicial District. If the vacancies are eliminated, we simply would not have enough judges to give each case as much time and attention it needs for fair, efficient and speedy justice.

Thank you for any assistance you may be able to provide in this matter.

Very truly yours,


Robert R. Maunu

RRM/pm

2011

95-776

105 IOOF BUILDING
129 EAST JACKSON
MANKATO, MINNESOTA 56001
TELEPHONE (507) 345-4545

Calvin Paul Johnson

ATTORNEY AT LAW

OFFICE OF
APPELLATE COURTS
FILED

AUG 23 1985

WAYNE TSCHIMPERLE
CLERK

August 22, 1985

Mr. Wayne Tschimperle
Clerk of Appellate Court
230 State Capital
St. Paul, MN 55155

Re: Judicial Vacancy Hearing; Fifth Judicial
District; Your File Number C9-85-1506

Dear Mr. Tschimperle:

This letter is a follow-up to our telephone conversation of August 22, 1985, regarding my request to be heard at the Judicial Vacancy Hearing scheduled at the Brown County Courthouse, New Ulm, Minnesota, Friday, September 13, 1985 at 10:00 a.m.

I am the District Public Defender from the Fifth Judicial District, State of Minnesota. I would like to present the view points of the Fifth Judicial District Public Defender System concerning the up-coming Judicial vacancies of Judge Mann and Judge Irvine. In general, I would like to present an overview of the impact that not filling two District Court Judgeships will have on the thirteen public defenders and our indigent clients from this district. Specifically, I would like to address issues concerning how time and expense can be kept at a minimum by filling the two judicial vacancies.

Consequently, I am requesting the opportunity to be heard at the oral hearing scheduled September 13. If you or any member of the Court should require further information that I would like to present at this hearing, please contact me. I look forward to presenting the views of the public defenders at this hearing. Please let me know if you will grant me the opportunity to be heard.

Thank you for your consideration.

Sincerely,

Calvin P. Johnson
Calvin P. Johnson
District Public Defender
Fifth Judicial District
State of Minnesota

cc: Fifth Judicial District Judges

STATE OF MINNESOTA
IN SUPREME COURT
C9-85-1506

OFFICE OF
APPELLATE COURTS
FILED

AUG 20 1985

WAYNE TSCHIMPERLE
CLERK

In re: Public Hearing on Vacancies
in Judicial Positions in the Fifth
Judicial District

P E T I T I O N

Pursuant to the Supreme Court order of August 8, 1985,
your Petitioner informs the Court as follows:

1. That he has served as a District Judge in the Fifth
Judicial District, chambered at Windom, Minnesota, since January
1967;

2. That he has served as Chief District Judge and
Assistant Chief Judge of the District and is familiar with the
operation of the court system in the district and the normal case
load carried in the district;

3. That he has lived in said district since 1950 and
practiced law for eighteen years prior to his appointment as
District Judge;

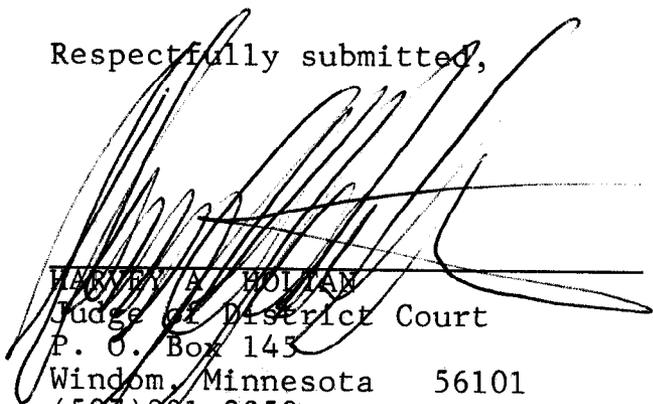
4. That he respectfully requests permission to make an
oral presentation to the Court at the hearing to be held in New
Ulm, Minnesota, on September 13, 1985, in favor of filling the
vacancies in the District Court positions which will occur in
October 1985 upon retirement of Judge L. J. Irvine, chambered at
Fairmont, Minnesota, and December 1985 upon the retirement of Judge
Walter H. Mann, chambered at Marshall, Minnesota;

5. That your Petitioner and Judge Charles Johnson of Mankato were selected by the judges of the Fifth Judicial District to present the unanimous opinion of the judges of the district that these two positions should be retained;

6. That your Petitioner's remarks will concern the political and social aspects of the failure to fill these vacancies and will allude to possible solutions to the problem of providing quality justice while meeting the political and social needs of the people.

Dated this 23rd day of August, 1985.

Respectfully submitted,



~~HARVEY A. HOLMAN~~
Judge of District Court
P. O. Box 143
Windom, Minnesota 56101
(507) 831-2358

LELAND BUSH
ATTORNEY AT LAW
TYLER, MINNESOTA 55178

OFFICE OF
APPELLATE COURTS
FILED

PHONE 507-247-5515

AUG 29 1985

August 27, 1985

WAYNE TSCHIMPERLE
CLERK

Clerk of the Appellate Courts
230 State Capital
St. Paul, Mn. 55101

Re: Order In Re Public Hearing on Vacancies in Judicial
Positions in the Fifth Judicial District C9-85-1506

Dear Gentlemen:

Please consider this letter as a summary of the information which I wish you to consider with regard to the above-captioned matter. At this time it is not my request to make an oral presentation at the hearing.

I am concerned that the weighted caseload study may not take into account the need and necessity of the access to justice for citizens living outside of the Metropolitan area. I presently practice in a county which does not have a resident Judge. We receive Judicial services on an as needed basis. The efforts of the Judges serving our county are commendable but the circumstances are nonetheless difficult.

Local citizens who I come in contact with frequently express concerns that the Judicial system does not offer access to a Judge because there are no Judges who reside in the county. They often express resentment at the fact that we at times travel outside of the county in order to convenience the Court for the purpose of holding hearings in Marshall, Minnesota.

I frequently see occasions when both District and County Court Judges are placed in a position where they must hurry from one Courthouse to another Courthouse or from one Courtroom to another in order to attempt to keep matters on schedule. I have observed that it is difficult for them to conduct their business in an orderly manner when they are called upon to travel some substantial distances within very definite time constraints. I recognize that a significant amount of their time may be consumed in travel. This does not even take into account the substantial expenses for travel which the litigants experience in traveling in order to meet with the Court or appear at various legal matters.

August 27, 1985
page 2

I am concerned that the weighted caseload analysis and its application to the two vacancies in the Fifth Judicial District suggest that a reduction in the Judicial staffing in this District may be appropriate. I am concerned that if that would occur, it would further limit the access to the Judiciary which in all candor, we already recognize as being limited. I am concerned that from my review of the weighted caseload analysis, it does not take into account the fact that there are geographic considerations when Judges must travel away from their chambers and when those Judges are expected to do research away from the District Court library, which exist at their chambers. My point is very simply that when these factors are considered, I urge the Court to consider the fact that a Judge who is responsible for practicing only within a short distance of his office and library has distinct advantage from the standpoint of the size of caseload he can adequately and efficiently handle when compared to a Judge, who because of geographic considerations, is called upon to travel upon a circuit on an ongoing basis.

It is my opinion that any reduction in Judicial staffing which would occur within the Fifth District, would have a very distinct limiting affect upon the access to the Judiciary and in turn upon the perception of the clients with whom I deal to their access to justice. I recognize that the idea of the Court in eliminating a Judicial position is to try to maintain "cost control" in the Judicial system. Emphasis, however, must also be placed upon quality and the public's perception of quality and justice which we are obtaining. It is my opinion that we have reached the point where further reductions in Judicial staffing do seriously impair client's access to the Judiciary and to justice.

It is my specific request that the present level of Judicial staffing be maintained and that it is my suggestion that if there is any question about this decision, that in addition to the weighted caseload analysis, there should also be considered the logistical factors of a Judge practicing in out-state Minnesota. Recognition should be given to the fact that the efficiencies differ throughout the state of Minnesota because of the circumstances in which the Judge must practice. It is not possible for a Judge to be as efficient when he is called upon to travel about a circuit to appear in various courtrooms in various counties throughout his district. It is possible and does happen on occasion that a Judge will travel some distance to hear a matter only to learn that the attorneys have been able to resolve the matter at the very door of the courtroom. Obviously, under

August 27, 1985
page 3

these circumstances all of the travel time has been wasted. If the Judge had been able to remain in his chambers, his schedule could have been essentially uninterrupted. At the same time the needs of the citizens residing in out-state Minnesota dictate that it is fundamentally unfair and inappropriate to select some central courthouse location, perhaps one or two counties distant from them and require that all legal matters be processed through that courthouse. With this recognition it is appropriate that some additional level of staffing be maintained in rural areas. It is necessary that something more than strict adherence to the number of cases, which a Judge will consider, be included in ascertaining the level of Judicial staffing.

Respectfully submitted,


Leland Bush LB/bh

Attorney at Law
Tyler, Minnesota 56178
License Number - 01184

LAW OFFICES
QUARNSTROM, DOERING, PEDERSON, LEARY & MURPHY

109 SOUTH FOURTH STREET
MARSHALL, MINNESOTA 56258-1396
507 537-1441

August 28, 1985

OFFICE OF
APPELLATE COURTS
FILED

AUG 29 1985

W. P. QUARNSTROM
LEE E. DOERING
DURWARD L. PEDERSON
PATRICK J. LEARY
BRIAN J. MURPHY
MICHAEL W. CABLE
DENNIS H. SIMPSON

IVANHOE OFFICE
P.O. BOX 190
214 NORTH NORMAN STREET
IVANHOE, MINNESOTA 56142
507 694-1763

WAYNE TSCHIMPERLE
CLERK

Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

Re: Judicial Vacancies in the Fifth Judicial District

Gentlemen:

C9-85-1506

I have practiced law in Marshall, Lyon County, Minnesota, for 21 years after graduation from law school. During that period of time, I have found that the people of Southwestern Minnesota have had delivered to them adequate legal services, both from the lawyers and the judges located in the area. Certainly, there have been times when the only judge available to sign an order may be some 50 miles away, but these occasions seem to be few and far between. Now, apparently there is a hearing scheduled on September 13 to determine whether or not the District Court vacancies at both Fairmont and Marshall will be replaced. It also seems that this decision will be based upon a case-load study in the Fifth Judicial District. Obviously, figures do not tell everything.

At the present time, Southwestern Minnesota is a sparsely populated area as compared to the larger metropolitan areas. In the larger metropolitan areas there appears to be judges available at all times, and in many instances these judges specialize in certain areas because of their various assignments. This, of course, is not true or able to be accomplished in rural Minnesota. However, the needs of the people and the lawyers is no less important to those people who have elected to live in the rural areas. That is, these people should have available to them the same quantity and quality of service that exists in the larger metropolitan areas. As I am sure you are aware, we are suffering a farm crisis in Southwestern Minnesota. Fewer judges are going to mean that lawyers are going to have to travel further to obtain services for clients. This travel is going to result in additional expense to clients. The additional expense to clients is going to deprive more people of the right to the use of the judicial system for the determination of judicial matters in dispute.

It is further interesting to note that the weighted case study apparently does not consider time that a judge has to spend on administrative matters or on researching and writing decisions. It appears that a glance through the Appellate Court's decisions leads one to believe that possibly the judges should have more time, and

QUARNSTROM, DOERING, PEDERSON, LEARY & MURPHY

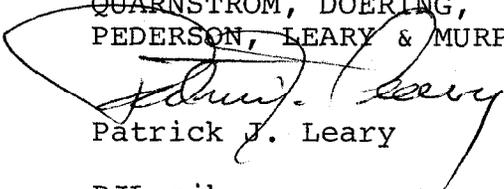
Clerk of Appellate Court
August 28, 1985
Page 2

that there be more judges so that we don't continuously and repeatedly receive opinions from the Appellate Court reversing and remanding decisions. Obviously, some of these decisions are not well thought out and not well written. I believe that one of the reasons for this is that rural judges have an amount of windshield time traveling from town to town and county to county, which is not accounted for in the studies. I can only submit that if we are not to replace two District Court judges in the district, we then place an additional burden on the remaining judges and expense to the clients. This would also decrease the ability of an individual to have judicial authority readily available and add to problems of increased judicial error.

I sincerely hope that the Supreme Court, in making decisions regarding the vacancies in the Fifth Judicial District, will consider more than the numbers, and that the effect on the quality of service will be also considered. I do not believe that the people of this state, whether they live in the metropolitan area or in Southwestern Minnesota, should be deprived of judicial services, and I further believe that the elimination of two judges in the Fifth Judicial District is certainly going to have that effect.

Very truly yours,

QUARNSTROM, DOERING,
PEDERSON, LEARY & MURPHY



Patrick J. Leary

PJL:cjh

cc: Paul Stoneberg
The Honorable Richard L. Kelly



COUNTY OF BLUE EARTH
BLUE EARTH COUNTY COURTHOUSE
MANKATO, MINNESOTA
56001

CHARLES C. JOHNSON
JUDGE

OFFICE OF
APPELLATE COURTS
FILED

SEP 3 1985

WAYNE TSCHIMPER
CLERK

TELEPHONE
(507) 625-3031

August 30, 1985

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

In Re: Public Hearing on Vacancies
in Judicial Positions in the
Fifth Judicial District

Dear Sir:

Enclosed find my petition to make an oral
presentation at the hearing to be held on September 13, 1985
in New Ulm, Minnesota.

Very truly yours,


Charles C. Johnson
Judge of County Court

CCJ:jb

enclosure

cc: Honorable Harvey Holtan
Honorable Richard Kelly

OFFICE OF
APPELLATE COURTS
FILED

SEP 3 1985

WAYNE TSCHIMPER
CLERK

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

In re: Public Hearing on Vacancies
in Judicial Positions in the Fifth
Judicial District

PETITION

Pursuant to the Supreme Court Order of August 8, 1985,
your Petitioner informs the Court as follows:

1. That he has served as a County Judge in the Fifth
Judicial District chambered at Mankato, Minnesota since
January 1973;

2. That he has served as Chief Judge and Assistant Chief
Judge of the District and is familiar with the operation of the
court system in the District and the normal case load
carried in the District;

3. That he has lived in said District most of his life and
practiced law for twenty-three years prior to his election
as County Judge;

4. That he respectfully requests permission to make an oral
presentation to the Court at the hearing to be held in New Ulm,
Minnesota on September 13, 1985 in favor of filling the
vacancies in the District Court positions which will occur
in October 1985 upon retirement of Judge L.J. Irvine, chambered
at Fairmont, Minnesota, and December 1985 upon the retirement of
Judge Walter H. Mann, chambered at Marshall, Minnesota;

5. That your Petitioner and Judge Harvey Holtan of Windom were selected by the judges of the Fifth Judicial District to present the unanimous opinion of the judges of the District that these two positions should be retained;

6. That your Petitioner's remarks will concern the application of the weighted caseload information to the Fifth Judicial District in determining whether to fill said vacancies.

Dated this 30th day of August, 1985.

Respectfully submitted,



Charles C. Johnson
Judge of County Court
Blue Earth County Courthouse
Mankato, MN 56001

MY NAME IS CHARLES C. JOHNSON. I AM A JUDGE OF THE BLUE EARTH COUNTY COURT AT MANKATO. FOR THE FOUR YEARS PRIOR TO JULY 1 OF THIS YEAR I SERVED AS CHIEF JUDGE OF THIS JUDICIAL DISTRICT, TAKING OFFICE ON JULY 1, 1981. FOR THE FOUR YEARS PRIOR THERETO I SERVED AS ASSISTANT CHIEF JUDGE OF THIS JUDICIAL DISTRICT, TAKING THAT OFFICE ON JULY 1, 1977.

AS A RESULT, I SERVED ON THE CONFERENCE OF CHIEF JUDGES SINCE ITS INCEPTION UP TO THE FIRST DAY OF JULY 1985. I HAVE BEEN VERY MUCH INVOLVED IN COURT ADMINISTRATION DURING THESE PAST EIGHT YEARS IN THIS DISTRICT AND WAS A MEMBER OF THE CONFERENCE OF CHIEF JUDGES WHEN THE WEIGHTED CASELOAD SURVEY WAS CONDUCTED IN AUGUST THROUGH NOVEMBER OF 1980 AND WAS A MEMBER OF THAT BODY WHEN DECISIONS WERE MADE CONCERNING THE SURVEY AND HOW THE ANALYSIS SHOULD BE CONDUCTED. LET ME SAY AT THE OUTSET THAT NONE OF US HAD ANY EXPERIENCE IN THIS AREA BEFORE BEING CALLED UPON TO MAKE DECISIONS AND IF CALLED UPON TODAY, WITH FIVE YEARS OF EXPERIENCE WITH THE WEIGHTED CASELOAD A DIFFERENT APPROACH AND DIFFERENT DECISIONS WOULD NO DOUBT BE MADE.

I AM NOT HERE TO CRITICIZE THE STATE COURT ADMINISTRATOR'S OFFICE NOR THE MANNER IN WHICH THE SURVEY WAS CONDUCTED OR THE PEOPLE INVOLVED IN CONDUCTING IT, THEY ALL DID A JOB THEY WERE ASKED TO DO AND DID IT WELL.

I DO WISH TO SAY THAT ALL OF THE INFORMATION SET FORTH

IN THE ORIGINAL WEIGHTED CASELOAD ANALYSIS ISSUED ON MARCH 16, 1981 SHOULD BE CONSIDERED. FOR EXAMPLE, AS STATED IN THAT PORTION OF THE REPORT ENTITLED "OBSERVATIONS", IT IS STATED: "THE WEIGHTED CASELOAD INDICATIONS DO NOT ADDRESS ISSUES RELATING TO GEOGRAPHICAL ACCESS. REDUCING THE JUDGESHIP COMPLIMENT IN SOME OUTSTATE JUDICIAL DISTRICTS AS INDICATED BY THIS ANALYSIS COULD CREATE A DIFFICULT ACCESS SITUATION WHERE PERSONS IN SOME SMALL COMMUNITIES COULD BE REQUIRED TO TRAVEL SIGNIFICANT DISTANCES TO SEE A JUDGE IN EXIGENT SITUATIONS. IT IS WORTHWHILE TO NOTE THAT THERE IS UNDOUBTEDLY A STRONG FEELING IN RURAL AREAS THAT A JUDGE SHOULD BE AVAILABLE IN EVERY COUNTY, WHETHER OR NOT THERE IS A SUFFICIENT CASELOAD TO REQUIRE A JUDGE'S FULL TIME PRESENCE."

LAWS OF MINNESOTA 1971, CHAPTER 551 CREATED THE COUNTY COURTS IN OUR STATE. THE ORIGINAL ACT CREATED NINE COUNTY COURT DISTRICTS IN THE FIFTH JUDICIAL DISTRICT; FIVE TWO-COUNTY DISTRICTS; ONE THREE-COUNTY DISTRICT; AND THREE SINGLE COUNTY DISTRICTS. INITIALLY THE ACT PROVIDED FOR ELEVEN COUNTY COURT JUDGES. AS A RESULT OF THE LOCAL OPTION PROVISIONS OF THE ACT, ALL MULTI-COUNTY DISTRICTS WERE CONVERTED TO SINGLE COUNTY DISTRICTS BY ACTION OF THE RESPECTIVE COUNTY BOARDS WITH THE EXCEPTION OF TWO TWO-COUNTY DISTRICTS. LOCAL OPTION ALSO RESULTED IN THE CREATION OF FIVE ADDITIONAL JUDGESHIPS IN THE COUNTY COURTS OF THIS JUDICIAL DISTRICT BY THE COUNTY BOARD, AND THIS WAS DONE AT A TIME WHEN THE SAME COUNTY BOARDS WERE PAYING THE SALARIES OF ALL COUNTY COURT JUDGES, INCLUDING THE ONES THEY

CREATED.

OBVIOUSLY, THE LOCAL UNITS OF GOVERNMENT SPOKE AND SAID THEY WANTED JUDICIAL SERVICES AVAILABLE IN THEIR RESPECTIVE COUNTIES WHETHER THE CASELOADS DEMANDED IT OR NOT. IF JUDGESHIPS ARE NOW SUNSETTED, THOSE SAME COUNTY BOARDS WILL, IN EFFECT, BE TOLD THAT BECAUSE THE STATE NOW PAYS THE SALARIES OF ALL JUDGES, THEY CANNOT HAVE THE JUDICIAL SERVICES THAT THEY DECIDED WERE NEEDED AND THAT THEY WERE WILLING TO PAY FOR. THEY WILL BE TOLD THIS WHEN THEY KNOW THAT THE LOCAL UNITS OF GOVERNMENT ARE PAYING ALL OF THE COSTS OF OPERATING THE TRIAL COURTS OF THIS STATE EXCEPT JUDGE'S SALARIES AND EXPENSES AND THAT THE STATE SPENDS LESS THAN ONE HALF OF ONE PERCENT OF ITS TOTAL BUDGET TO OPERATE THE JUDICIAL BRANCH OF GOVERNMENT STATEWIDE.

IT SHOULD ALSO BE NOTED THAT THE "MINNESOTA WEIGHTED CASELOAD ANALYSIS 1980 THROUGH 1984" STATES IN ITS LAST PARAGRAPH: "BEFORE IDENTIFYING ACTUAL POSITIONS WHICH MAY BE TRANSFERRED OR ELIMINATED CONSIDERATION MUST BE GIVEN TO THE GEOGRAPHIC DISPERSION OF JUDGESHIPS. THE ELIMINATION OF A POSITION MUST NOT CAUSE UNACCEPTABLE TRAVEL REQUIREMENTS OR DELAYS ON THE REMAINING JUDGES, LAW ENFORCEMENT OFFICIALS, ATTORNEYS, AND LITIGANTS." OBVIOUSLY REMOVING TWO JUDGESHIPS FROM THIS DISTRICT WILL INCREASE TRAVEL REQUIREMENTS, THERE WILL BE MORE DELAYS THAN WHAT NOW EXISTS, ALL FOR NO OTHER REASON THAN THERE WILL BE FEWER JUDGES THAN PRESENTLY ARE AVAILABLE TO

DO THE WORK. IN REGARD TO THE OVERALL USE OF STATISTICS TO DETERMINE JUDICIAL NEEDS, I REFER YOU TO A PUBLICATION OF THE NATIONAL CENTER FOR STATE COURTS ENTITLED ASSESSING THE NEED FOR JUDICIAL RESOURCES, GUIDELINES FOR A NEW PROCESS, PRELIMINARY DRAFT. IT WAS PUBLISHED IN 1983 AND IS AVAILABLE FROM THE NATIONAL CENTER FOR STATE COURTS AT WILLIAMSBURG, VIRGINIA. I AM CERTAIN THAT THE STATE COURT ADMINISTRATOR'S OFFICE HAS COPIES AVAILABLE. THIS IS THE PRELIMINARY DRAFT OF THE TASK FORCE ON PRINCIPLES FOR ASSESSING THE ADEQUACY OF JUDICIAL RESOURCES. IT IS INTERESTING TO NOTE THAT DENNIS E. HOWARD, FORMERLY A DISTRICT COURT ADMINISTRATOR IN MINNESOTA, SERVES ON THAT TASK FORCE REPRESENTING THE NATIONAL ASSOCIATION OF TRIAL COURT ADMINISTRATORS. THEREFORE, I AM SURE THAT IT IS SAFE TO ASSUME THAT THE EXPERIENCES IN MINNESOTA WERE CONSIDERED IN THE WORKING OF THE TASK FORCE.

THIS PUBLICATION DISCUSSES WEIGHTED CASELOAD STUDIES INCLUDING THEIR PROS AND CONS. ON PAGE 33 THERE IS A DISCUSSION OF LIMITATIONS OF WEIGHTED CASELOAD SYSTEMS. THE FIRST CRITICISM EXPRESSED IS THAT THE: "WEIGHTED CASELOAD SYSTEMS ENSHRINE PROCEDURES AS THEY ARE RATHER THAN ENCOURAGE OR REWARD IMPROVED EFFICIENCY. THE FACT THAT JUDGES SPEND AN AVERAGE OF ONE HOUR ON A CONTESTED TEMPORARY SUPPORT MOTION IN A DOMESTIC RELATIONS CASE, FOR INSTANCE, PROVIDES NO CLUE TO POLICY MAKERS WHETHER SUCH A MOTION COULD BE HEARD WITH EQUAL FAIRNESS IN 45 MINUTES OR IF AN HOUR IS TOO RUSHED TO PROVIDE A FULL HEARING TO BOTH SIDES. ANOTHER COMPLICATING FACTOR IN EVALUATING THE TIME

SPENT IS THAT IT CAN EXPAND OR CONTRACT TO FILL AVAILABLE TIME AND IN RESPONSE TO AN ESPECIALLY HEAVY CALENDAR. FURTHER, JUDGES IN RURAL COURTS MAY SPEND MORE TIME ON A SPECIFIC STEP OR PROCEEDINGS THAN JUDGES IN A VERY BUSY URBAN COURT, BUT THE ADDITIONAL TIME SPENT IN THE RURAL COURT DOES NOT NECESSARY MEAN THAT THE JUDGE IS NOT PERFORMING HIS OR HER JOB EFFECTIVELY. IF THERE IS NEED FOR A JUDGE TO SERVE A COMMUNITY FROM TIME TO TIME SOME CALENDAR INEFFICIENCY MAY HAVE TO BE TOLERATED AS A COST OF HOLDING COURT IN SMALL COMMUNITIES."

ANOTHER CRITICISM SET FORTH IS: "THE WEIGHTS DEVELOPED ARE AVERAGE WEIGHTS FOR AN ENTIRE STATE. VERY FEW, IF ANY, COURTS WILL BE "AVERAGE". THE STATEWIDE AVERAGE WEIGHT SUPPLIED IN A PARTICULAR COURT MAY BE UNFAIR, EITHER BECAUSE THEY DO NOT PROVIDE A TRUE PICTURE OF RESOURCE NEEDS OR BECAUSE THEY OVERSTATE RESOURCE NEEDS. IT IS FOR THIS REASON THAT THE TASK FORCE DOES NOT PROPOSE RELYING SOLELY ON A WEIGHTED CASELOAD SYSTEM, BUT URGES ON-SITE VISITS AND SOLICITATIONS OF LOCAL OPINIONS ABOUT RESOURCE NEEDS BEFORE A FINAL JUDGMENT IS MADE."

THE TASK FORCE FURTHER STATES THAT: "---PERIODIC UPDATING OF WEIGHTS IS NECESSARY TO ASSURE THEIR CONTINUING VALIDITY. THE TASK FORCE SUGGESTS THAT REDETERMINING WEIGHTS EVERY THREE TO FOUR YEARS IS AN APPROPRIATE SCHEDULE, UNLESS THERE ARE MAJOR STATUTORY CHANGES THAT INDICATE THE NEED FOR A SHORTENED SCHEDULE."

IN THIS REGARD THE MINNESOTA WEIGHTS HAVE NOT BEEN REDETERMINED SINCE THEY WERE SET FIVE YEARS AGO. I SUBMIT THAT THERE HAVE BEEN MAJOR STATUTORY CHANGES THAT CALL FOR THIS BEING DONE BEFORE ANY DECISIONS ARE BASED UPON THE PRESENT ANALYSIS. ADDITIONALLY, THERE ARE SEVERAL FACTORS THAT ARE NOT INCLUDED IN THE PRESENT WEIGHTED CASELOAD ANALYSIS THAT SHOULD BE INCLUDED IN A NEW ANALYSIS. LET ME CITE SOME EXAMPLES:

1. THE CURRENT WEIGHTED CASELOAD ANALYSIS DOES NOT ADDRESS THE ISSUE OF SPECIALIZATION VERSUS GENERALIZATION IN BOTH THE BENCH AND THE BAR. THE WEIGHTED CASELOAD METHODOLOGY DOES NOT ACCOUNT FOR THE ECONOMIES OF A SPECIALIZED BENCH AND BAR COMMONLY FOUND IN THE METROPOLITAN AREAS VERSUS THE GENERAL PRACTITIONERS IN THE RURAL AREAS. BOTH THE BENCH AND BAR IN THE RURAL AREAS MUST NECESSARILY SPEND GREATER TIME RESEARCHING AND PRESENTING ISSUES WHICH THEY DO NOT REGULARLY DEAL WITH.

2. SINCE THE 1980 WEIGHTED CASELOAD STUDY, THE CIVIL JURISDICTION OF THE COUNTY COURT HAS BEEN INCREASED TO \$15,000. IT WAS \$5,000 AT THE TIME THE WEIGHTS WERE DETERMINED. IN COMPARING THE WEIGHTS ATTRIBUTED TO THE VARIOUS CIVIL CASE TYPES IN DISTRICT COURT TO THOSE IN COUNTY COURT, IT APPEARS THAT THE AVERAGE DISTRICT COURT CIVIL CASE IS GIVEN TWICE THE WEIGHT GIVEN AN AVERAGE COUNTY COURT CIVIL CASE. OBVIOUSLY, THE DIFFERENCE BETWEEN THOSE AVERAGES WOULD BE REDUCED BECAUSE THE COUNTY COURT AVERAGE CASE WEIGHT WOULD INCREASE ALONG WITH THE NUMBER OF CIVIL FILINGS IN COUNTY COURT BASED ON THE FACT THAT

THE COUNTY COURTS ARE HANDLING MORE CASES PREVIOUSLY HANDLED IN THE DISTRICT COURT.

3. SINCE 1980 SUBSTANTIAL CHANGES HAVE BEEN MADE IN THE CIVIL COMMITMENT PROCESS WHICH REQUIRE GREATER JUDICIAL TIME BOTH IN TERMS OF HEARINGS AND TRAVEL. THE NEW LAW REQUIRES A FULL PETITION AND REVIEW HEARING ANNUALLY FOR THOSE INDIVIDUALS COMMITTED AS MENTALLY ILL. BECAUSE OF THIS PROCEDURE THE CASE WOULD REQUIRE REGULAR JUDICIAL ACTION FOR POSSIBLY 50 OR MORE YEARS DEPENDING UPON THE AGE OF THE INDIVIDUAL WHEN INITIALLY COMMITTED AND THE CONTINUED CONDITION WHICH WAS THE REASON FOR THE ORIGINAL COMMITMENT. UNDER THE CURRENT REPORTING PRACTICES OF SJIS I AM NOT SURE THESE SUBSEQUENT PETITIONS ARE TREATED AS NEW CASES. AS A PRACTICAL MATTER, SUBSEQUENT PETITIONS ARE ADDED TO THE ORIGINAL FILE. AS THESE MATTERS FALL IN THE JURISDICTION OF THE COUNTY COURT, COMMITMENT CASE WEIGHTS SHOULD BE REVIEWED.

4. SINCE 1980 THE COUNTY COURTS HAVE BEEN GIVEN CONCURRENT JURISDICTION WITH THE DISTRICT COURT OVER GROSS MISDEMEANOR MATTERS. THIS SHOULD ALREADY BE ACCOUNTED FOR IN THE FILING OF STATISTICS BUT THE 91.07 WEIGHT SHOULD BE APPLIED TO THOSE FILINGS RATHER THAN THE 4.85 USED IN 1980 FOR COUNTY/MUNICIPAL CRIMINAL-TRAFFIC-PARKING.

5. SINCE 1980, MORE SEVERE SANCTIONS HAVE BEEN IMPOSED ON THOSE CONVICTED OF DWI. SIMILARLY, THE IMPLIED CONSENT

PROCEDURES HAVE BEEN MODIFIED WITH STRICTER SANCTIONS. THE NET RESULT IN THE FIFTH JUDICIAL DISTRICT HAS BEEN MORE TRIALS AND MORE PETITIONS FOR JUDICIAL REVIEW. I BELIEVE THESE TYPES OF CASES SHOULD BE REVIEWED IN LIGHT OF THE CRIMINAL AND TRAFFIC WEIGHTS APPLIED TO THE 1980 STUDY.

6. IN 1982-83 THE RULES OF JUVENILE PROCEDURE WERE REWRITTEN TO REQUIRE GREATER JUVENILE RIGHTS PROTECTION AND REPRESENTATION. I SUBMIT THAT THESE MODIFICATIONS HAVE INCREASED THE PER CASE WORKLOADS OF THE RURAL COUNTY COURT JUDGES AND THE METRO DISTRICT BENCH.

7. THE METROPOLITAN JUDGES (BOTH DISTRICT AND COUNTY-MUNICIPAL) HAVE BETWEEN ONE AND TWO LAW CLERKS PER JUDGE TO ASSIST IN LEGAL RESEARCH AND TO DRAFT MEMORANDA, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND OTHER ORDERS AND OPINIONS. IN THE RURAL DISTRICTS THE DISTRICT COURT IS ALLOWED BY LAW ONE LAW CLERK PER TWO JUDGES. NO STATUTORY AUTHORITY EXISTS FOR THE COUNTY COURT JUDGES TO HAVE A LAW CLERK. CONSEQUENTLY, RURAL JUDGES ARE FORCED TO DO THEIR OWN RESEARCH AND DRAFT THEIR OWN DOCUMENTS. THE 1980 WEIGHTED CASELOAD STUDY MAKES NO METRO-RURAL ADJUSTMENT FOR THIS FACTOR.

8. THE SECOND, FOURTH AND SIXTH JUDICIAL DISTRICTS MAKE EXTENSIVE USE OF NON-JUDICIAL PERSONNEL AND RESOLUTION PROGRAMS TO AUGMENT THE JUDICIAL RESOURCES IN THEIR DISTRICTS. IN THE CASE OF THE ALTERNATIVE DISPUTE RESOLUTION PROGRAMS, THE CASES

ARE GENERALLY FILED WITH THE COURT, REFERRED TO A PROGRAM LIKE ARBITRATION/MEDIATION AND IN MOST INSTANCES RESOLVED WITHOUT SIGNIFICANT COURT INVOLVEMENT. IF THESE MECHANISMS HAVE A SIGNIFICANT BEARING ON DISPOSITIONS WHEN THE NEXT WEIGHTED CASELOAD STUDY IS DONE, THEIR IMPACT SHOULD BE REFLECTED OR BALANCED AGAINST RAW JUDICIAL NEEDS.

9. TWO ISSUES SURFACE CONCERNING THE WEIGHTED CASELOAD STUDY WHEN LOOKING AT THE VARIOUS COURT STRUCTURES AND ORGANIZATIONS IN THE TEN JUDICIAL DISTRICTS. THE FIRST CONCERN IS THAT COMPARABLE CASES BE GIVEN COMPARABLE WEIGHTS. TECHNICALLY, THE THIRD, SEVENTH, NINTH AND TENTH DISTRICTS WILL NO LONGER HAVE COUNTY COURT CASES. IT IS OBVIOUS THAT EITHER THE OLD COUNTY COURT WEIGHTS MUST BE APPLIED TO CASES THAT WOULD BE COUNTY COURT CASES IN A NONMERGED DISTRICT. IN THE GENERAL CIVIL AREA THIS PROBLEM MAY BE VERY DIFFICULT TO RESOLVE AND I WILL ALLUDE TO THIS LATER.

ADDITIONALLY THE TASK FORCE RECOMMENDS THAT IN ESTABLISHING A SYSTEM IT PREFERS DATA BASED ON A 12 MONTH EXPERIENCE. THIS IS BECAUSE THEY HAVE CONCLUDED THAT OBSERVERS OF JUDICIAL ACTIVITY HAVE LONG RECOGNIZED SEASONAL VARIATION IN COURT ACTIVITY. DATA COLLECTED FOR A MONTH OR TWO MAY BE SKEWED BY THIS SEASONAL VARIATION. REALIZING THAT COLLECTING DATA FOR A FULL TWELVE MONTH PERIOD WOULD BE IMPRACTICAL AND PROBABLY FINANCIALLY PROHIBITIVE, THE TASK FORCE MAKES SEVERAL SUGGESTIONS AS TO HOW TO ACCOMPLISH IT.

IT SHOULD BE NOTED THAT OUR SURVEY WAS CONDUCTED FROM AUGUST 11, 1980 TO NOVEMBER 21, 1980. IN THIS DISTRICT, PARTICULARLY IN THE DISTRICT COURT, IT HAS LONG BEEN THE TRADITION THAT JUDGES TAKE THEIR VACATIONS IN AUGUST OF EACH YEAR. IT COMPLIES WITH WHAT MIGHT BE TERMED A SEASONAL SLUMP IF ANY STILL EXISTS AND WAS STARTED MANY YEARS AGO. I SUBMIT THAT IF THE TIME SHEETS SUBMITTED BY THE JUDGES OF THIS DISTRICT DURING THE SURVEY ARE CHECKED THEY WOULD REVEAL THAT A LARGE NUMBER OF JUDGES WERE ON VACATION DURING AUGUST 1980.

I HAVE MENTIONED ONLY A FEW CRITICISMS SET FORTH IN THE TASK FORCE REPORT BUT I WOULD LIKE TO QUOTE THE CONCLUSION OF THE TASK FORCE SET FORTH ON PAGE 35. "FOR THE REASONS JUST SUGGESTED, IT IS CLEAR THAT A STATISTICAL ANALYSIS ALONE IS NOT SUFFICIENT TO DETERMINE A LOCALITY'S NEED FOR JUDICIAL RESOURCES. NEITHER THE STATE NOR THE LOCALITY IS SERVED WELL IF THE ASSESSMENT OF NEED IS LIMITED TO STATISTICAL INDICIA."

BUT LET ME TURN TO THE MOST RECENT ANALYSIS, THAT BEING FOR THE YEARS 1980 THROUGH 1984.

WE MUST FIRST ACKNOWLEDGE, AS DOES THAT REPORT, THAT COURT CONSOLIDATION IN THE THREE DISTRICTS WHERE IT HAS TAKEN PLACE, THE THIRD, SEVENTH AND TENTH DISTRICTS, TOGETHER WITH THE CONSOLIDATED CIVIL DOCKET IN THE FOURTH DISTRICT, HAS CAUSED SERIOUS PROBLEMS WITH THE EXISTING WEIGHTED SYSTEM. AS A

RESULT, THE MOST RECENT MEANINGFUL FIGURES FOR HENNEPIN COUNTY, THE FOURTH DISTRICT, WERE DERIVED IN 1982 AND IN THE THIRD, SEVENTH AND TENTH DISTRICTS IN 1983.

A REVIEW OF THE 1984 FIGURES AND THE MOST CURRENT FIGURES FOR THE DISTRICTS JUST MENTIONED, INDICATES THAT THE FIRST, FOURTH AND TENTH DISTRICTS ARE IN NEED OF JUDGES AND ALL OF THE REST OF THE DISTRICTS HAVE TOO MANY JUDGES EXCEPT THE SEVENTH DISTRICT WHICH APPEARS TO BE JUST ABOUT RIGHT. IT IS INTERESTING TO NOTE THAT THE DISTRICT HAVING THE GREATEST NUMBER OF JUDGES IN EXCESS OF ITS NEEDS IS THE SECOND DISTRICT, RAMSEY COUNTY. IN ARRIVING AT THESE CONCLUSIONS I HAVE ALLOCATED TO THE TENTH DISTRICT ONE ADDITIONAL DISTRICT JUDGE AND TO THE FIRST DISTRICT TWO ADDITIONAL COUNTY COURT JUDGES, ALL AS AUTHORIZED BY THE LAST SESSION OF THE LEGISLATURE. FURTHER, I HAVE ROUNDED OFF ALL FIGURES TO THE NEXT HIGHEST WHOLE NUMBER AS WAS DONE IN THE INITIAL REPORT PUBLISHED IN 1981.

IT IS OBVIOUS THAT THE FIFTH DISTRICT IS TO BE CONSIDERED IN COMPARISON TO THE NEEDS OF THE THREE DISTRICTS NEEDING ADDITIONAL JUDGES. I SUBMIT THAT THIS WOULD BE COMPARING APPLES TO ORANGES. THERE ARE NO MEANINGFUL, UP TO DATE FIGURES AVAILABLE FOR THE FOURTH AND TENTH DISTRICTS. THESE FIGURES SHOULD NOT BE USED TO SUNSET JUDGESHIPS IN ONE DISTRICT SO AS TO BENEFIT ANOTHER WHEN WE DO NOT KNOW, ON AN UP TO DATE BASIS, WHAT THE NEEDS OF THAT DISTRICT ARE. HOWEVER, IF THE CURRENT FIGURES ARE TO BE FOLLOWED, I RESPECTFULLY POINT OUT

THAT THE SECOND DISTRICT, RAMSEY COUNTY, PRESENTLY HAS SIX TOO MANY JUDGES ACCORDING TO 1984 FIGURES. THEY ARE ALREADY IN THE METROPOLITAN AREA AND THE THREE DISTRICTS NEEDING ADDITIONAL JUDGES ALL ABOUT THE SECOND DISTRICT. I RESPECTFULLY SUGGEST AND RECOMMEND THAT THOSE EXTRA METROPOLITAN JUDGESHIPS BE USED IN THE METROPOLITAN AREA WHERE NEEDED AND LEAVE THE EXISTING JUDGESHIPS IN THE RURAL AREA WHERE THEY ARE NEEDED.

AS MENTIONED PREVIOUSLY, THE WEIGHTS WE ARE USING ARE "AVERAGE" FOR THE ENTIRE STATE. THAT AVERAGE WAS OBTAINED BY TAKING ALL OF THE REPORTS FROM THE JUDGES AND AVERAGING THEM AS TO THE TIME NECESSARY TO PERFORM A GIVEN PROCEDURE. NO CONSIDERATION WAS GIVEN AS TO THE DIFFERENCE BETWEEN GROUPS OF JUDGES WHO CAN, OR ATLEAST SHOULD, PROCESS THEIR WORK QUICKER THAN OTHERS. THIS IS WHAT MAKES NO DISTRICT AN "AVERAGE" DISTRICT. LET ME GIVE AN EXAMPLE. AS PREVIOUSLY MENTIONED, THE METROPOLITAN AREA HAS ONE OR TWO LAW CLERKS AVAILABLE TO EACH JUDGE OF BOTH COURTS TO ASSIST THEM IN PERFORMING THEIR DUTIES. OUTSTATE THERE IS ONE LAW CLERK FOR EVERY TWO DISTRICT JUDGES AND NONE AVAILABLE TO THE COUNTY COURTS. WE HAVE TWO LAW CLERKS IN THE FIFTH DISTRICT AVAILABLE TO THE FIVE DISTRICT JUDGES. IF TWO JUDGESHIPS ARE SUNSETTED, WE WILL HAVE ONE LAW CLERK REMAINING IN ACCORDANCE WITH CURRENT LAW. I ASSUME A JUDGE WHO HAS ONE, OR POSSIBLE TWO, LAW CLERKS AVAILABLE FOR ASSISTANCE WILL PUT LESS TIME ON A GIVEN CASE THAN A JUDGE WHO HAS NO LAW CLERK OR THE USE OF A LAW CLERK HALF TIME OR ONE THIRD TIME. KEEP IN MIND THAT THE RURAL DISTRICT LAW CLERK VERY PROBABLY

WILL BE LOCATED IN A COMMUNITY OTHER THAN THE ONE IN WHICH THE RURAL JUDGE'S CHAMBERS ARE LOCATED.

SUCH BEING THE CASE, THE METROPOLITAN AREA JUDGE WHO WORKS IN HIS OWN CHAMBERS EVERY WORKING DAY AND HAS HIS LAW CLERK OR CLERKS AVAILABLE IN HIS CHAMBERS OR COURTROOM EACH DAY OBVIOUSLY PUTS IN MUCH LESS TIME ON A GIVEN CASE OR PROCEDURE THAN THE RURAL JUDGE WHO DOES NOT HAVE THOSE BENEFITS. THE SAME COMPARISON CAN BE MADE ON THE ISSUE OF SPECIALIZATION.

THE RESULT IS, WHEN THE AVERAGE IS DETERMINED THE METROPOLITAN AREA JUDGE BENEFITS BECAUSE THE AVERAGE EXCEEDS HIS NEEDED TIME AND THE RURAL JUDGE HAS A HARDSHIP BECAUSE THE AVERAGE IS LESS THAN THE TIME HE OR SHE NEEDS TO PERFORM THE SAME PROCEDURE. HENCE, NEITHER DISTRICT IS "AVERAGE", AND IN COMPARING THE RURAL TO THE METROPOLITAN DISTRICT IT'S A "WE LOSE, YOU WIN PROPOSITION".

I BELIEVE THE SUPREME COURT CAN RECOGNIZE FROM ITS OWN EXPERIENCE WHAT HAPPENS WHEN LAW CLERKS ARE LOST, HAVING HAD TO GIVE UP SOME OF ITS CLERKS TO THE INTERMEDIATE COURT OF APPEALS.

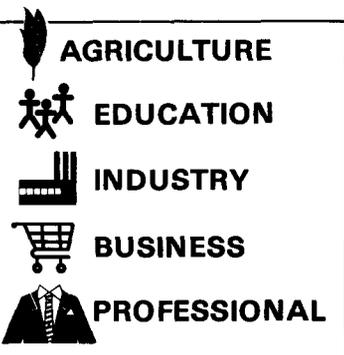
I WAS INFORMED AT THE MEETING OF THE CONFERENCE OF CHIEF JUDGES HELD LAST JUNE THAT AN APPROPRIATION WAS OBTAINED AND A NEW WEIGHTED CASELOAD SURVEY WILL BE CONDUCTED IN THE NEAR FUTURE. I HAVE ALREADY SUGGESTED ADDITIONAL FACTORS THAT I

BELIEVE SHOULD BE INCLUDED IN ANY NEW SURVEY. I AM SURE THAT MANY SUGGESTIONS WILL COME FROM ALL OVER THE STATE IN AN EFFORT TO MAKE THE NEW STUDY MORE MEANINGFUL AND MORE REFLECTIVE OF CONDITIONS AS THEY ACTUALLY EXIST.

I WOULD LIKE TO INCORPORATE HEREIN BY REFERENCE ALL OF THE REASONS THAT THE SUPREME COURT GAVE TO THE LEGISLATURE THROUGH THE STATE COURT ADMINISTRATOR'S OFFICE TO SHOW THE NEED FOR A WEIGHTED CASELOAD STUDY AND USE THOSE SAME REASONS TO CONVINCING YOU THAT OUR JUDGESHIPS SHOULD NOT BE SUNSETTED. THE PRESENT SURVEY IS OLD, OUTDATED, OBSOLETE AND CERTAINLY DOES NOT CONTAIN MEANINGFUL CURRENT FIGURES ON WHICH THE SUNSETTING OF ANY JUDGESHIPS SHOULD BE BASED. FURTHER, JUDICIAL NEEDS SHOULD NOT BE BASED ENTIRELY ON STATISTICAL INFORMATION, UNLESS WE ARE LOOKING FOR SOME SORT OF PUSH-BUTTON COMPUTERIZED JUSTICE. THE REASONS FOR THE CREATION OF THE JUDGESHIPS IN THE FIRST PLACE MUST BE CONSIDERED ALONG WITH THE NEED TO PROVIDE JUDICIAL SERVICES TO SMALL COMMUNITIES AND THE DESIRE OF LOCAL GOVERNMENT TO HAVE JUDICIAL SERVICES AVAILABLE TO THEIR CONSTITUENTS REGARDLESS OF CASELOADS.

IN CONCLUSIONS, I RESPECTFULLY REQUEST THAT THE SUPREME COURT NOT SUNSET ANY JUDGESHIPS IN THIS DISTRICT; THAT A NEW WEIGHTED CASE SURVEY BE CONDUCTED BASED ON THE INFORMATION AND EXPERIENCE NOW AVAILABLE, THAT THE EXTRA JUDGES APPARENTLY AVAILABLE IN THE SECOND DISTRICT BE MADE AVAILABLE TO WORK IN THE FIRST, FOURTH AND TENTH DISTRICTS WHICH ARE ALL ADJACENT TO

IT UNTIL A NEW SURVEY CAN BE COMPLETED AND WE ALL KNOW WHERE WE
ARE AT.



The Chamber

GASLIGHT SQUARE, MAIN AT FIFTH • MARSHALL, MINNESOTA 56258 • TELEPHONE 507/532-4484

September 4, 1985

OFFICE OF
APPELLATE COURTS
FILED

SEP 5 1985

The Supreme Court of Minnesota
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

WAYNE TSCHIMPER
CLERK

To the Supreme Court of Minnesota:

On behalf of the Marshall Area Chamber of Commerce's Professional Services Committee, I am contacting you with a request concerning the forthcoming openings that there will be in our district for District Court Judges.

It was brought to our attention with the retirements of Judges Mann and Irving, that there is a possibility that one or both of these positions might not be filled, but transferred to one of the District Courts in the Twin Cities.

We feel very strongly that both of these positions be refilled. With one, or even two fewer District Court Judges handling the work load in southwestern Minnesota, there is sure to be a back-log of hearing cases that will be very difficult for the judicial system to handle.

Along with this, the rural areas need the service now more than ever, with the difficult challenges that lie ahead of us. Asking a County Judge to handle the district cases, will not lessen the load, and in many cases the County Judge may not have sufficient background on the type of cases that could be thrust upon them.

We ask that you consider leaving these two positions as they are now, and after the retirements of Judges Mann and Irvine, to refill the positions with good competent judges.

Respectfully,

Tom Tourville
Executive Vice President
Marshall Area Chamber of Commerce



MARTIN COUNTY ATTORNEY

D. GERALD WILHELM
COUNTY ATTORNEY

ROBERT D. WALKER
ASSISTANT

September 4, 1985

OFFICE OF
APPELLATE COURTS
FILED

SEP 5 1985

115 WEST FIRST STREET
FAIRMONT, MN 56031

TELEPHONE
507/238-1594

WAYNE TSCHIMPERLE
CLERK

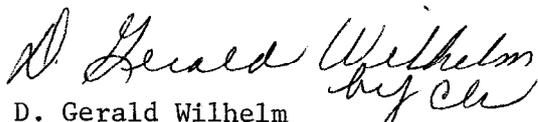
Wayne Tschimperle
Clerk of the Supreme Court
230 State Capitol Bldg.
St. Paul, MN 55155

RE: September 13th Hearing Regarding
Transfer or Elimination of District
Court Position

Dear Mr. Tschimperle:

I have been advised that a hearing has been scheduled for September 13th in New Ulm, Minnesota, at 10:00 A.M., concerning the contemplated elimination or transfer of the District Judge positions which will be vacated by the Honorable L. J. Irvine (Fairmont) and the Honorable Walter Mann (Marshall). Please consider this my request to speak on behalf of the 17th District prosecutors and the 5th District County Attorneys Association at that hearing.

Sincerely,


D. Gerald Wilhelm
MARTIN COUNTY ATTORNEY

DGW:cls

KUNZ, MUELLER & HIPPERT
ATTORNEYS AT LAW
512 SECOND STREET NORTH
P.O. BOX 485
NEW ULM, MINNESOTA 56073

L.A. KUNZ
A.R. MUELLER
ROGER H. HIPPERT
NOEL L. PHIFER

TELEPHONE
(507) 354-3158

September 5, 1985

OFFICE OF
APPELLATE COURTS
FILED

SEP 6 1985

Mr. Wayne Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

WAYNE TSCHIMPERLE
CLERK

Re: Anticipated Vacancies in Fifth
Judicial District
District Court Judgeships

C9-85-1506

Dear Mr. Tschimperle:

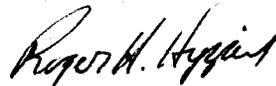
It is my understanding that consideration is being given to vacating two of the district court judgeships upon the retirement of two district court judges in the fifth judicial district. As an attorney practicing primarily in this district, this possibility is very disturbing to me.

I have been informed that a hearing will be held at the Brown County Courthouse in New Ulm, Minnesota, on September 13, 1985, to consider oral testimony regarding the necessity of maintaining five district court judges in this district. I am requesting that I be allowed to express my feelings at this hearing regarding the necessity of maintaining five district court judges in this area.

Because a large part of my private practice involves litigation, especially criminal defense, I anticipate that I would advise the person presiding over this hearing of the necessity of having a district court judge available for consideration of the frequent exigent procedures that occur in this area of the law. Specifically, it is often necessary to locate a district court judge for the purposes of considering the setting of bail, the necessity of bench warrants, and other matters involving the revocation of probation and extradition proceedings. A reduction in the number of district court judges available would also affect the practice of civil law, particularly in the areas of injunctive relief and the prompt resolution of civil litigation.

Thank you for your attention to my request.

Yours very truly,



Roger H. Hippert
Attorney at Law
License No: 45391

RHH/kkg

JOHNSON, BERENS & WILSON

ATTORNEYS AT LAW

201 EAST THIRD STREET - P.O. BOX 271

FAIRMONT, MINN. 56031

507-235-5544

NEWTON A. JOHNSON
RICHARD D. BERENS
JAMES A. WILSON

SHERBURN OFFICE
507-764-6716
L. M. WHITEHEAD, RETIRED

September 5, 1985

OFFICE OF
APPELLATE COURTS
FILED

SEP 6 1985

Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

WAYNE TSCHIMPER
CLERK

Re: Fifth Judicial District
Judicial Vacancies
C 9-85-1506

Dear Clerk:

I have been selected by the Bar Associations of Faribault, Martin and Jackson Counties to make an oral presentation at the public hearing concerning the two judicial vacancies in the Fifth Judicial District. The three named counties comprise the Seventeenth Judicial District Bar Association and are all located in the Fifth Judicial District. I am their elected representative to the Board of Governors of the Minnesota State Bar Association.

Pursuant to the Supreme Court Order, I am hereby requesting an opportunity to make an oral presentation at the scheduled hearing.

I intend to present the following information and concerns:

1. THE ABSENCE OF A DEFINITION OR LEGISLATIVE HISTORY DEFINING THE TERM "EFFECTIVE JUDICIAL ADMINISTRATION."

The terminology "effective judicial administration" appearing in M.S. 2.722, Subd. 1(a) is not defined and will possibly be construed to exclude numerous matters which relate directly to the concept of effective judicial administration. In determining whether a judicial position can be effectively vacated, consideration must be given to the added burden imposed upon litigants, counsel, law enforcement personnel, witnesses and the judiciary when a position is abolished. The Minnesota Weighted Case Load Analysis indirectly focuses upon those factors but does not give them any consideration in the quantitative analysis. As is stated in the "Observation" portion of the study:

"Reducing the judgeship complement in some outstate judicial districts as indicated by this analysis could create a difficult access situation, where persons in some small communities could be required

to travel significant distances to see a judge in exigent situations."

It is my belief that eliminating either or both of the judgeships in the Fifth Judicial District would create a difficult access situation not only in "exigent situations" but also on a routine and predictable basis. The travel factors are particularly significant in the Fifth Judicial District because of the significant distances between county seats. It is inconceivable to think that three district court judges even supplemented with county court judges could effectively serve the area encompassed by the Fifth Judicial District.

The additional miles which must be driven and time spent by everyone involved in the judicial system will increase markedly if either position is abolished or transferred. These are factors which must be measured and considered in determining whether a judicial position is necessary for "effective judicial administration."

2. SURVEY RESULTS IN SEVENTEENTH JUDICIAL DISTRICT.

A survey was conducted by the President of the Seventeenth Judicial District Bar Association. He sent a questionnaire to active practitioners in Faribault, Martin and Jackson Counties. There were approximately forty-four survey questionnaires distributed, forty-two were returned. Every person responding felt that the judicial position currently held by Judge Irvine should be retained in Martin County. The results of this survey demonstrate that the members of the bar feel that the judicial position should be retained. The statutory dictate of the recently enacted legislation requires the Supreme Court to consult with attorneys in the affected district. The survey clearly expresses the feelings of the bar. This sample can be reasonably interpreted to convey a message to the Supreme Court that the attorneys in the Fifth Judicial District do not want either position abolished or transferred.

3. DEFICIENCIES OF THE MINNESOTA WEIGHTED CASE LOAD ANALYSIS AS IT RELATES TO THE RURAL AREA.

A. The Minnesota Weighted Case Load Analysis contains its own language as to why the Supreme Court should not place too much emphasis on the analysis in determining whether the two positions to be vacated should be abolished or transferred. In pertinent part, the analysis states:

"In some, the Weighted Case Load Study represents an objective assessment of the number of judges necessary to dispose of the workload in the courts in each judicial district as of December 31, 1980.

"These weighting factors are primarily derived from time data collected from judges and court personnel during the Weighted Case Load Survey conducted during the period August 11, 1980, to November 21, 1980.

"It should be emphasized that these judgeship need indications specified by county and district jurisdiction within each judicial district, are derived from annualized 1980 SJIS statistics. Since SJIS has been in existence for slightly more than two years, we are not able to project future case load demands. It is generally held among quantitative researchers that approximately five years of history are necessary to project future case loads."

It would be judicially irresponsible to make a determination to vacate or transfer the two existing positions by relying upon the 1980 analysis when that document itself indicates that five years of history are necessary to project future case loads. Those five years have now elapsed, and a new study should be undertaken. That study should include more input from rural judges in determining case weight values. A new analysis may eliminate the deficiencies that are pointed out in the initial study. For instance, it is noted with respect to county court judges in the study as follows:

"It should be emphasized that county-by-county indications of need are intended for gross comparison only. The smaller data samples available for the rural counties allow less statistical confidence in their accuracy; more reliable indications of county and district judgeship needs are aggravated at the judicial district level. The possibility for significant statistical error on a county level is far greater than the possibility

of statistical inaccuracy at the judicial district level."

I believe it is the feeling of the practitioners and county court judges in the Fifth Judicial District that information in the 1980 analysis is less than accurate. Because the 1980 analysis points out the obvious possibility of statistical error, a new study should be undertaken to verify the original findings or establish that the initial analysis is inaccurate with respect to county court judges in the Fifth Judicial District.

In summary, the 1980 analysis indicates that "in general terms the analysis indicates that there are too many judges in rural areas to dispose of case loads in these areas." That vague statement based upon 1980 data does not seem to be the type of information the Supreme Court should rely upon in making its determination as to whether the two vacated judicial positions in the Fifth Judicial District should be continued, transferred or abolished. Practicing attorneys in the Fifth Judicial District know that once the positions have been abolished they will never be restored.

- B. Expanded jurisdictional parameters of the county courts, including the increased jurisdictional limit in civil proceedings, transfer of gross misdemeanor D.W.I. and D.A.R. cases warrants reconsideration of the case load analysis as it relates to county courts. The Supreme Court should take note of the fact that the jurisdictional limit in county court in 1980 was \$5,000.00. It has since been increased to \$15,000.00. This, obviously, has caused an increase in civil filings in the county court. This fact, coupled with the increased county court responsibility in the area of gross misdemeanors may have a significant impact upon conclusions reached in the 1980 analysis. The impact of these new responsibilities upon the county courts together with county court responsibilities not considered in the original study should be reconsidered or taken into consideration. It is important to note that the analysis does not take into consideration many of the responsibilities of the county court with respect to juvenile alcohol or controlled substance offenders, juvenile truants, runaways, habitually disobedient juveniles, petty offenders, foster care review or legislative changes with respect to juvenile proceedings. There are other jurisdictional areas that are not addressed in the 1980 analysis that do come within the jurisdiction of the county

court. These would include post-judgment dissolution proceedings, including change of custody, child support amendments, contempt proceedings, and the recently enacted Uniform Reciprocal Enforcement of Support Act.

4. UNCONSTITUTIONALITY OF M.S.A. 2.722, SUBD. 1(a).

The recently enacted legislation permits the Minnesota Supreme Court to make a determination as to whether judicial positions should be abolished, transferred or continued. Minnesota Constitution Art. VI, Section 8 provides that when there is a vacancy in the office of judge, the governor shall appoint a qualified person to fill the vacancy until a successor is elected and qualified. Minn. Stat. 2.722, Subd. 1(a) enables the Supreme Court to abolish the position. This would seem to be in direct conflict with the constitutional requirement that a vacancy be filled. The legislature has provided for five district court judges in the Fifth Judicial District. Apparently it is within the province of the legislature to determine the number of judges for each district. Since the legislature has established the number of judges for each district, the constitution requires that each vacancy be filled by appointment. The constitution does not provide that the Supreme Court has the power to reduce the number of judicial positions. I suggest that this may be an unlawful delegation of legislative power to the Supreme Court. As was stated in the Minnesota Weighted Case Load Analysis, resolution of the policy as to the number of judges which should be made available in the state is "an appropriate concern for the legislature." Interestingly enough, the legislature has now apparently determined that it is an appropriate concern of the Supreme Court. I suggest that the legislature has made an unconstitutional delegation of powers inherent in that body.

5. SUMMARY.

Both the Bench and Bar in the Fifth Judicial District feel that the five existing District Court Judgeships should be retained in order to provide citizens of the District with effective judicial administration. The 1980 Weighted Case Load Analysis is not a reliable indicator of the true need for District and County Judges in the district. Figures obtained in 1980 which do not encompass all of the jurisdictional responsibilities of the County Court should not be relied upon by the Supreme Court in 1985 in determining whether a judicial position should be abolished or transferred. The legislation which enables the Supreme Court to make the determination was not subjected to the scrutiny of the various groups and individuals affected by the law. House Speaker, David Jennings, indicated that the only group which pressed for the legislation was the Minnesota Supreme Court. From the language contained in the Order calling for a public hearing, it is apparent that the Supreme Court intends to rely heavily upon the Weighted Case Load Analysis. In fairness to the citizens, attorneys, and judges in the Fifth Judicial District, the Supreme Court should hold its opinion in abeyance pending receipt of reliable statistical information which compares rural districts to rural districts and metropolitan districts to metropolitan districts, rather than rural to metropolitan. It seems evident that the Supreme Court intends to use the new legislation simply to transfer rural judges to the metropolitan area. This is unjust as rural residents deserve as easy access to the judicial system as do metropolitan residents.

Very truly yours,



Richard D. Berens

LAW OFFICES
GISLASON, DOSLAND, HUNTER & MALECKI
A PARTNERSHIP INCLUDING A PROFESSIONAL ASSOCIATION

SIDNEY P. GISLASON
C. ALLEN DOSLAND
DONALD F. HUNTER, P. A.
JAMES H. MALECKI
DANIEL A. GISLASON
ROBERT M. HALVORSON
C. THOMAS WILSON
JAMES B. WALLACE
DAVID D. ALSOP

STATE AND CENTER STREETS
P. O. BOX 458
NEW ULM, MINNESOTA 56073
507-354-3111

220 WOODBRIDGE PLAZA
10201 WAYZATA BOULEVARD
MINNETONKA, MINNESOTA 55343
612-544-8036

RUTH ANN WEBSTER
BARRY G. VERMEER
GARY W. KOCH
WILLIAM A. MOELLER
TIMOTHY P. TOBIN
TIMOTHY J. OLIVER
KURT D. JOHNSON
ROGER H. GROSS
TIMOTHY W. NELSON
R. STEPHEN TILLITT
LEAH R. BUSSELL

REPLY TO

New Ulm

September 5, 1985

OFFICE OF
APPELLATE COURTS
FILED

SEP 6 1985

WAYNE TSCHIMPEL
CLERK

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Fifth Judicial District Judgeships

C9-85-1506

Dear Sir:

On behalf of the Ninth Judicial District Bar Association, I request an opportunity to make an oral presentation to Justice C. Donald Peterson at the hearing set for September 13, 1985 in New Ulm on the issue of Judgeships for this District. Specifically, two District Court Judgeship vacancies are expected before the end of the year as a result of the retirements of Judges L. James Irvine and Walter H. Mann.

To summarize my intended remarks:

1. The Minnesota Weighted Case Load Analysis is not necessarily a true reflection of judicial case loads. The study does not take into account driving time required of judges to get to the place of trial or hearing.
2. Failure to fill the District Court vacancies will force upon the District a unified court system which, by statute, is intended to be done only on a voluntary basis.
3. Unification in the broad geographical area of the Fifth District will result in a judiciary of generalists in a time where judicial expertise is required, and as a result, the quality of judicial activity will be reduced in complicated litigation, family court matters, and probate matters.

Clerk of Appellate Courts
September 5, 1985

4. Failure to fill the District Court vacancies will ultimately result in the unavailability of a judge in each county of the District. Easy access to the courts in both civil and criminal matters is a fundamental right of all citizens of the District.
5. If the vacancies are not filled and unification is achieved, not only will the quality of the judiciary be reduced by lack of expertise, the quality of applicants for judgeships to fill future vacancies will be greatly diminished due to lack of interest of highly qualified lawyers.
6. The Scales of Justice were never intended to be balanced by studies and statistics; human factors and the best interests of the citizens of the District are the true considerations.

Respectfully submitted,



C. Allen Dosland

CAD/cmw

O'LEARY AND MORITZ, CHARTERED

ATTORNEYS AT LAW

BOX 76

SPRINGFIELD, MINNESOTA 56087-0076

J. BRIAN O'LEARY

September 5, 1985

PHONE 507-723-6272

JOHN D. MORITZ

SANBORN 648-3211

COMFREY 877-2511

Mr. Wayne Tschimperle
Clerk of Appellate Court
30 State Capitol
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS
FILED

SEP 6 1985

WAYNE TSCHIMPERLE
CLERK

Re: My File 3516
Ninth District
Bar Association

C9-85-1506

Dear Mr. Tschimperle:

Pursuant to the published notice in regard to the judicial vacancies of Judge Mann and Judge Irvine occurring in the Fifth District, I would like to take this opportunity to present my written position. I will not be available for the hearing as I have a prior commitment that day but would like to submit the following:

As I am sure it has been pointed out by many others, the weighted caseload study does not take into consideration factors unique to rural judiciaries such as the time necessary for travel between county seats. Further, in the Fifth District, without unification, many of the matters handled by the courts are given less weight than in other districts due to their being handled by the county court judges rather than district court judges. Therefore, I feel that the weighted caseload study is somewhat in error in its conclusions as to the needed judgeships in the Fifth District.

Even assuming that the weighted caseload study was correct, the issue seems to me to be one of cost effectiveness versus availability of judges in rural areas such as the Fifth District. I am sure that the county boards and citizens in the various counties would not object to paying more for their judicial services than people in more populated areas if the alternative was to be without a full-time judge. It certainly is a great imposition on the citizens in rural areas to not have judges available in criminal matters for posting bonds, assuring

Mr. Wayne Tschimperle
September 5, 1985
Page 2

speedy trials, etc. Further, in civil matters, the longer it takes to have a case heard by a court or a jury, the more difficult it is to find and have available witnesses and have their testimony accurate.

It seems to me that too much emphasis is being placed on statistical data here and not enough on the needs for efficient and fair judicial proceedings for the residents of rural Minnesota.

I would ask that the Supreme Court continue both Judge Irvine and Judge Mann's judgeships. To transfer or abolish the judgeships would render a great hardship on the administration of justice in the Fifth Judicial District.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Brian O'Leary". The signature is stylized with a large initial "J" and "B".

J. Brian O'Leary, President
Ninth District Bar Association

JDM:ag

CHRISTIANSON, STONEBERG, GILES & MYERS, P.A.

ATTORNEYS AT LAW

310 WEST COLLEGE DRIVE
MARSHALL, MINNESOTA 56258
(507) 537-0591

110 EAST SECOND STREET
MINNEOTA, MINNESOTA 56264
(507) 872-6168

MARCUS J. CHRISTIANSON
PAUL E. STONEBERG
DANIEL L. GILES
J. KENNETH MYERS
OF COUNSEL
LESTER R. CHRISTIANSON

OTHER OFFICES:

TUES. AND FRI. P.M.
COTTONWOOD, MN 56229
(507) 423-6215

September 5, 1985

OFFICE OF
APPELLATE COURTS
FILED

REPLY TO:

Marshall

SEP 6 1985

WAYNE TSCHIMPER
CLERK

Minnesota Supreme Court
c/o Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

RE: Judicial Vacancies in the Fifth Judicial District

Gentlemen:

On behalf of the 43 attorneys and judges comprising the Lyon-Lincoln County Bar Association, I am submitting the following information to you pursuant to Justice Peterson's August 8, 1985 Order. While many surmise that you have "preliminarily" determined to transfer the two positions, our hope is that your final determination will be made "in consultation with" us as required by Minnesota Statutes 2.722, subd. 1a.

The issue before us is whether the two district court vacancies created by the retirement of Judges Irving and Mann are necessary for effective judicial administration. We believe that these two positions must be continued for several reasons:

1. The Legislature has not abandoned the distinction between district court and county court judges. The 1980 Weighted Caseload Indication was that the Fifth Judicial District needed five district court judges. The 1981-1984 figures would justify no change in the 1980 Indication. If the Weighted Caseload Study shows we need five district court judges, on what basis can one say there is only a need for three or four district court judges. The concept of the "Unified Court" has not been adopted by the Legislature in this area. To argue that the alleged over abundance of county court judges somehow compensates for the abolishment of two district court positions is "forced unification".

2. In its first special session, the 1985 Legislature considered the needs of the ten judicial districts for the district court judges. Based upon the same statistical information before you, the Legislature determined that the Fifth Judicial District needed five judges. Minnesota Statutes 2.722, subd. 1.5. Now just over two months later, the Legislature's determination should not be changed without substantiation of a reduced need for five district court judges.
3. The issue is whether the two positions are necessary for effective judicial administration of the Fifth Judicial District, and is not whether some other judicial district has the need for additional judges. To abolish the two positions would greatly reduce the effectiveness of our justice system in Southwestern Minnesota by:
 - a) reducing access to the courts. With litigants competing for the time of fewer judges, resolution of disputes will take longer. The frustrations of delay will only lessen the public trust and respect for our legal system.
 - b) increasing the costs of litigation. If the public, attorneys and judges have to travel greater distances, greater legal expense and travel expense will result. More and more people will be unable to afford justice.
 - c) downgrading the quality of decisions. Increased workload and greater travel would give judges less time to give adequate consideration to their decisions. Poorly reasoned decisions will result in more appeals and greater burdens upon our appellate court system.

Our overriding concern should be the provision of efficient justice for the people of the Fifth Judicial District. If the district needs five district court judges, it should have five district court judges. If we have too many county court judges, their number will be reduced pursuant to Minnesota Statutes 2.722, subd. 1a., or the Legislature can take other measures. We would urge you to continue the two district court positions.

Yours truly,

LYON-LINCOLN COUNTY BAR ASSOCIATION



Paul Stoneberg
President

LAW OFFICE
DOUGHERTY & SCOTT
117 NORTH MAIN STREET
P. O. BOX 958
FAIRMONT, MINNESOTA 56031-0958
TELEPHONE (507) 235-3351

OFFICE OF
APPELLATE COURTS
FILED

SEP 9 1985

WAYNE TSCHIMPERLE
CLERK

THOMAS E. DOUGHERTY
KENNETH E. SCOTT
STEPHEN D. GABRIELSON

September 6, 1985

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

In re: Public Hearing on Vacancies in
Judicial Positions in the Fifth Judicial District

Dear Mr. Tschimperle:

Pursuant to the Order of the Supreme Court filed August 9, 1985, I am filing with you by mail a written summary of information concerning the continuation of the two judicial vacancies described above. This writtem summary is submitted on behalf of Richard D. Berens, president of our district bar association, who has already filed a written summary and will be making an oral presentation at the September 13, 1985 hearing.

Section 58 of the State Department Appropriations Bill enacted in the 1985 Special Session contains the "judicial vacancy" language that appears in M.S. 2.722, Subd. 1(a).

The Minnesota legislature enacted 1500 pages of legislation in three days during the 1985 Special Session. The State Department Appropriations Bill contained 378 sections.

The Legislative History is extraordinary. Neither the House nor the Senate passed a Bill containing "judicial vacancy" language during the 1985 regular session. Bills containing "judicial vacancy" language were introduced in both the House and the Senate, but they died in Committee.

A Conference Committee included the "judicial vacancy" language in the State Department Appropriation Bill during the Special Session. Section 58 was not discussed when that Bill reached the floor of the House.

The Minnesota State Bar Association did not endorse or support that legislation, and rural members had no knowledge that such a Bill had been introduced.

It would be appropriate for the Supreme Court to give the legislature an opportunity to consider this substantial change in law on its merits before making any change.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen D. Gabrielson". The signature is written in dark ink and is positioned above the typed name.

STEPHEN D. GABRIELSON
President, Martin County Bar Association
SDG:grs

cc: Richard D. Berens, Esquire

The Honorable David Jennings

Terry M. Dempsey

District 23A
Brown-Cottonwood-Redwood Counties

Committees:

Taxes

Local Government Finance Division,
Chairman

Judiciary

Transportation

Legislative Commission on Pensions and
Retirement



Minnesota House of Representatives

David M. Jennings, Speaker

September 9, 1985

APPELLATE COURTS
FILED

SEP 10 1985

WAYNE TSCHIMPERLE
CLERK

Mr. Wayne O. Tschimperle
Clerk of Appellate Court
230 State Capitol Building
St. Paul, MN 55155

RE: Fifth Judicial District Judgeships

Dear Mr. Tschimperle:

Because of a previous commitment, I will not be able to be in attendance at the hearing scheduled for September 13 on the issue on the number of judgeships for our judicial district. I would appreciate it very much if you would make this letter part of that record in lieu of my personal attendance.

This Judicial District, according to the case study, has more judges than needed. I think that finding fails to consider the question of the distance and time involved in a judge's travel. Obviously, the needs of people in our judicial district, are substantially difference than it might be in a more concentrated population area. There is a strong feeling that we should retain all of the judgeships we presently have. Even with the number of judges in this Judicial District, and considering the caseload study, the judges of this district most certainly are being kept busy by their case work. A reduction of the number of judgeships at the time of increasing caseloads and in the number of matters being tried seems to be totally inconsistent. I would strongly support the retention of the two district judges with chambers in Fairmont and Marshall.

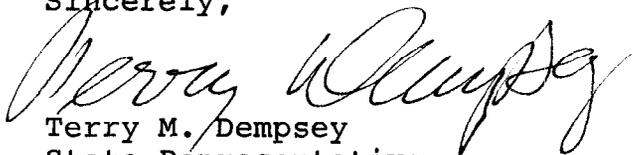
If the number of judges in this District is reduced, when the need for more judges occurs, most certainly that need will exist for a substantial length of time before a new judgeship would be created in this area. It seems that the appointment of judges always lags far behind the justifiable need for judges. This has been the experience throughout the State of Minnesota, and I think it is something that must be considered when you look at the reduction of judges that we have in our Judicial District.



TO: Clerk of Appellate Court
September 9, 1985
Page 2

I want to thank you for your consideration in considering this letter in lieu of a personal appearance before the committee, as I strongly feel that the issue is important to the Bench, the Bar, but also all of the citizens residing in our Judicial District.

Sincerely,



Terry M. Dempsey
State Representative

TMD:lkd

cc: J. Brian O'Leary

OFFICE OF
APPELLATE COURTS
FILED

SEP 10 1985

Marshall, Minnesota
September 9, 1985

WAYNE TSCHIMPERLE
CLERK

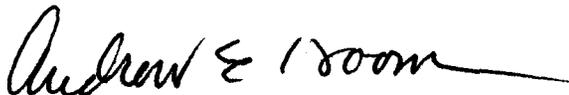
Minnesota Supreme Court
c/o Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

RE: DISTRICT COURT VACANCIES IN THE 5TH JUDICIAL DISTRICT

Dear Honorable Members of the Court:

I have been employed as a State Parole and Probation Agent by the State of Minnesota for the past 15 years and have worked in the 5th Judicial District for the last eleven years. I have conducted investigations and have supervised probationers for each of the five District Court Judges in the District, and it has been my observation that the system has functioned well. I am concerned that if one or two District Court judgeships are removed from the 5th Judicial District, the integrity of the system will be diminished. It is clearly desirable to maintain contact with a sentencing judge on a regular basis to report on the progress, special needs, and changing status of probationers. It is also occasionally necessary to seek a warrant or a timely modification of a court order. Since the 5th Judicial District encompasses a sizeable geographical area without significant concentration of population, it has necessitated a great deal of travel on the part of the District Court Judges to serve the public. To require more travel would obviously make it more difficult to maintain contact regarding the current probation caseload, and it would likely reduce the likelihood that those accused of crimes would gain access to the court in a timely manner. Further, in addition to increased travel, the increased workload of the remaining judges would serve to make them more inaccessible to the correctional clients and public of the 5th Judicial District.

Respectfully submitted,



Andrew E. Doom
State Parole and Probation Agent
Marshall, MN 56258

AED:eh

GARY DeCRAMER
Senator 27th District
Ghent, Minnesota 56239
Phone: (507) 428-3578
and
Room 303 State Capitol
St. Paul, Minnesota 55155
Phone: (612) 296-6820

Senate

OFFICE OF
APPELLATE COURTS
FILED

State of Minnesota

September 11, 1985

SEP 12 1985

WAYNE TSCHIMPERLE
CLERK

The Honorable C. Donald Peterson
Supreme Court Justice
Room 218, State Capitol
St. Paul, MN 55155

Dear Justice Peterson:

C9-85-1506

This is an additional document to add to your files
regarding the transfer of justices from the 5th district.

Truly,



Gary DeCramer
State Senator

GDC/sb
Enclosure

GEORGE MARSHALL
JUDGE



TELEPHONE
(507) 537-6740

COUNTY OF LYON
LYON COUNTY COURTHOUSE
MARSHALL, MINNESOTA
56258

September 3, 1985

Honorable Harvey Holtan
Judge of District Court
Cottonwood County Courthouse
Windom, MN 56101

Honorable Charles Johnson
Judge of County Court
Blue Earth County Courthouse
Mankato, MN 56001

RE: Replacement of Judges

Last week I held hearings in four county courtrooms and in two district courts. In a rural area, we are not afforded the luxury of holding hearings adjacent to chambers.

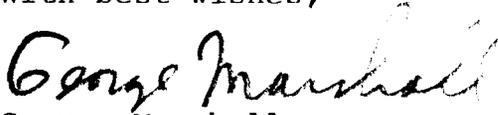
The metropolitan area continues to be held out as the standard we are measured against. Last week the St. Paul newspaper ran a front page story of an interview of the Court Administrators in the District and Municipal Courts in Ramsey County. There is a 12-month delay in civil jury trials in Ramsey County after cases are ready for trial. If we apportion judges on the basis of the weighted caseload study, we will dilute justice in rural areas and perhaps equalize case delays to about 11 months statewide. The metro area needs more judges but this should not be done at a cost to rural areas.

Hennepin and Ramsey Counties have cases heard before referees in such matters as family court, juvenile court, probate court, and conciliation court with the findings of the referee approved by the elected judges. Many of these type of cases are very time consuming. I do not know whether the time of the referees is considered in the weighted caseload nor whether they are counted as judges in the weighted caseload. If we reduce the number of judges in rural areas, will it be necessary for us to appoint referees? Will this provide the same quality of justice in rural areas?

The metropolitan area also calendars several cases for trial for the same day and the parties must be available for trial and the cases may never get into court until a day later in the week. In the sake of moving cases on a calendar, we should not use this standard of practice statewide. If we have fewer judges, we may find no alternative but to inconvenience parties, witnesses, and attorneys by requiring that they be available as standby cases. Since in a rural area, attorneys appearing in court are often from other counties we would have no alternative but to require that they be in town to wait and see if their cases would be called for trial as a standby.

The metropolitan area should be able to obtain more judges without diluting justice statewide. Please feel free to use this letter however you feel it appropriate for the hearing at New Ulm.

With best wishes,



George Marshall
Judge of County Court

GM:jc

cc: Hon. Richard Kelly
Hon. Walter Mann
Hon. James Irving
Hon. Noah Rosenbloom
Hon. Miles Zimmerman
Hon. George Harrelson
Hon. Wayne Farnberg
John Whitmeyer
Paul Stoneberg
Brian O'Leary
David Peterson
Cecil Naatz
Mike Cable
Jan Nelson
Gary DeCramer
Lyon County Board of Commissioners
Lincoln County Board of Commissioners
Redwood County Board of Commissioners

GEORGE MARSHALL
JUDGE



COUNTY OF LYON
LYON COUNTY COURTHOUSE
MARSHALL, MINNESOTA
56258

TELEPHONE
(507) 537-6740

APPELLATE COURTS
FILED

SEP 11 1985

WAYNE TSCHMIDT
CLERK

September 10, 1985

Supreme Court
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

RE: Replacement of Judges in Fifth Judicial District

During the last week of August, I held hearings in four county courtrooms and in two district courts. In a rural area, we do not hold hearings adjacent to chambers.

The metropolitan area continues to be held out as the standard we are measured against. Recently the St. Paul newspaper ran a front page story of an interview of the Court Administrators in the District and Municipal Courts in Ramsey County. There is a twelve-month delay in civil jury trials in Ramsey County after the cases are ready for trial. If we apportion judges on the basis of the weighted caseload study, we will dilute justice in rural areas and perhaps equalize case delays to about 11 months statewide.

Hennepin and Ramsey Counties have cases heard before referees in such matters as family court, juvenile court, probate court, and conciliation court with the findings of the referee approved by the elected judges. Many of these types of cases are very time consuming. If we reduce the number of judges in rural areas, will it be necessary for us to appoint referees?

The metropolitan area also calendars several cases for trial for the same day and the parties must be available for trial and the cases may never get into court until a day later in the week. In the sake of moving cases on a calendar, we should not use this standard of practice statewide. If we have fewer judges, we may

September 10, 1985

Page 2

find no alternative but to inconvenience parties, witnesses, and attorneys by requiring that they be available as standby cases. Since in a rural area, attorneys appearing in court are often from other counties we would have no alternative but to require that they be in town to wait and see if their cases would be called for trial as a standby.

The metropolitan area should be able to obtain more judges without diluting justice statewide.

Sincerely,


George Marshall
Judge of County Court

GM:jc

Southwest Women's Shelter

210 South First Street
Marshall, Minnesota 56258

Business 507/532-4604
Emergency 507/532-2350

APPELLATE COURT
FILED

SEP 11 1985

WAYNE TSCHNAPF
CLERK

September 9, 1985

Minnesota Supreme Court
c/o Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

Dear Supreme Court Justices,

I have been involved both as an advocate and as a director for the Southwest Women's Shelter in Marshall for six years. In those capacities it has been my job, as well as the staff's, to assist battered women with Orders for Protection. In most instances the Order for Protection is of an emergency nature and in many situations it is literally a life or death matter.

Many of the women who come to us do not stay at the shelter and/or they come from a distance. After going through the preliminary work to form the basis for an Order for Protection, women frequently appear before one of the local judges in Marshall. We have had excellent service from these judges. We believe this is because the number of judges available has made it possible for them to accomodate women who are in need of immediate help. I cannot emphasize enough that many of the women who have traveled to the shelter and who are in a desparate and violent situation expect that the ordr will be signed that day.

We ask you to carefully consider the situation of women in crisis when you make your decision. We request that you maintain the present number of judges in the fifth district.

Sincerely,



Ardis Andert



WALTER H. MANN
JUDGE OF DISTRICT COURT
COURTHOUSE
MARSHALL, MINNESOTA 56258

TELEPHONE
507 - 532 - 5259

September 6, 1985

APPELLATE COURT
FILED

SEP 6 1985

WAYNE TSCHIMPERLE
CLERK

The Honorable C. Donald Peterson
Associate Justice of the Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Judicial Vacancies - Fifth Judicial District

CA-85-1506

Dear Justice Peterson:

It is my understanding that a hearing will be held in the Courthouse in New Ulm, Minnesota, on Friday, September 13, 1985, to give persons who desire to be heard concerning the vacancies created by my retirement and that of Judge L. J. Irvine an opportunity to present their views.

It is my desire to appear at such hearing. It would be appreciated if a time, not exceeding fifteen minutes, be scheduled for my presentation.

The subject matter of my presentation is intended to relate to my 25 years on the bench in a rural area and the reasons why a decision should not now be based on the logistics pertaining to the weighted caseload studies.

Respectfully yours,

WALTER H. MANN
JUDGE OF DISTRICT COURT

WHM:ejt

DISTRICT COURT OF MINNESOTA
FIFTH JUDICIAL DISTRICT
NEW ULM, MINNESOTA 56073
TELEPHONE 354-2014

NOAH S. ROSENBLUM
JUDGE

September 6, 1985

APPELLATE COURT
FILED

SEP 6 1985

WAYNE TSCHIMPERLE
CLERK

Office of the Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Attn: Hon. C. Donald Peterson
Senior Associate Justice -
Supreme Court of Minnesota

RE: Judicial Vacancies, 5th Judicial District
CQ-85-1506

Dear Mr. Justice Peterson:

Consonant with the Order of August 8, 1985, I offer the following comment as to whether the vacancies which will arise on the District Bench of 5th Judicial District upon the retirement of Hon. L. J. Irvine and Walter H. Mann, should be filled.

I do not know what the latest weighted caseload analysis of Judicial workload in this District shows. I assume it does not differ from materials available to me based on 1984 data. These show there is need for five full-time trial judges on the District Bench in 5th Judicial District. I do not need statistical data to know that is so. Long hours in my job with little or no vacation for a number of years tell me that I am fully employed in my present assignment (primarily, Brown and Nicollet Counties). I know my brother judges on this bench are also working diligently and consistently. Three of us cannot handle the load previously carried by five over the long term without assistance. It is my judgment that, one way or another, two replacement trial judges will have to be found to give full-time attention to the District Court in order to meet workload in the District.

If the two anticipated vacancies are "sunsetting" so that judicial vacancies can be assigned elsewhere in the State where additional judges are needed, the ability of this bench to meet the District Court trial load will be impaired more than loss of two out of five judges would imply. We would, additionally, lose one law clerk. Present law permits us one for every three trial judges, Minn. Stats. 1984, Section 484.545. Under that statute, we now have two law clerks in the District. My only access to the law clerk assigned to me (shared with Judges Mann and Holtan) is by telephone or correspondence. That meager assistance will be further diluted if the number of law clerks permitted is reduced to a single law clerk by "sunsetting" the vacancies. The remaining clerk would, then, have to serve the three remaining District Judges plus, in addition, at least two County Judges assigned to assist with the workload. Obviously, the present meager assistance provided us would be reduced to virtual insignificance.

The District Bench presently serves the caseload by "block assignment" geographically determined by area. There is a growing consensus that block assignment is a more efficient, responsible, and more effective way of dealing with caseload. The largest jurisdiction in the State, Hennepin County, is now (at long last) adopting it. If we are to continue block assignment arrangements in this District, it may be necessary that one or more County Court judges assigned to do the work previously done by Judges

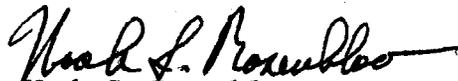
Hon. C. Donald Peterson
September 6, 1985
Page 2

Mann and Irvine, would have to move their residence to a place closer to the statutory chambers of the judge replaced. It would be unjust to impose that expense on the judge concerned. What authority might there be for the State to bear it? How could we legitimately require the Counties of the District to absorb it? The alternative would be an increase in travel expense to the State of a type specifically disapproved by statutory change several years ago when Section 484.54 was amended to limit travel expense from place of residence to permanent chambers.

If the problem were addressed by multiple assignments which would divide up the work formerly performed by Judges Irvine and Mann among more than two County Court judges to whom it would be permanently assigned, an even greater added burden of expense would fall on the several Counties of the District for court reporters not now required.

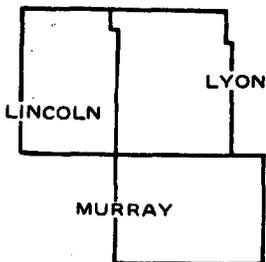
I do not ask opportunity to orally present my views at the hearing September 13th as I feel these comments are sufficient to the purpose. Indeed, trial work presently scheduled may conflict so that I am unable to attend the hearing.

Respectfully,


Noah S. Rosenbloom

NSR/ch

cc: Hon. Richard L. Kelly, Judge of County Court, Chief Judge, 5th Judicial Dist.,
Brown County Courthouse, New Ulm, MN 56073
Hon. Miles B. Zimmerman, Judge of District Court, Assist. Chief Judge, 5th Judicial
District, Blue Earth County Courthouse, Mankato, MN 56001
Hon. Harvey A. Holtan, L. J. Irvine, & Walter H. Mann, District Judges
John Whitmyer, 5th District Court Administrator, Watonwan County Crth., St. James, MN



REGION VIII NORTH

WELFARE DEPARTMENT

Marshall, MN 56258

Phone: 507-537-6747

COURTHOUSE

OFFICES IN

IVANHOE, MN.

56142

MARSHALL, MN.

56258

SLAYTON, MN.

56172

APPELLATE COURTS
FILED

SEP 6 1985

WAYNE TSCHIMPERLE
CLERK

September 6, 1985

Honorable C. Donald Petersen
Associate Justice
Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55155

Dear Justice Petersen:

C9-85-1506

I am writing to express some of my concerns regarding the retirement of two judges in the 5th Judicial District and the possibility that only one position will be replaced.

~~Our agency does not have alot of matters that enter district court, but we are concerned about time frames and distances involved in our rural area. Time frames in relation to scheduling I believe has been a problem and this would be compounded if only one appointment is made. The same would be true of distances and the amount of time that would be spent traveling. Also, I believe that more and more might be shifted to county courts and compound their scheduling problem.~~

All of the above may not be the major issues, but are practical issues.

It just seems to me from a lay man's viewpoint that our area needs both positions filled if we are concerned about administrative justice in a timely fashion.

Thank you for your consideration.

Yours Truly,

Frank Moorese
Director

FM/smm

GARY DeCRAMER
Senator 27th District
Ghent, Minnesota 56239
Phone: (507) 428-3578
and
Room 303 State Capitol
St. Paul, Minnesota 55155
Phone: (612) 296-6820

APPELLATE COURTS
FILED

SEP 6 1985

WAYNE TSCHIMPEL
CLERK

Senate

State of Minnesota

September 6, 1985

The Honorable C. Donald Peterson
Senior Associate Justice
Minnesota Supreme Court
c/o Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

RE: PUBLIC HEARING ON VACANCIES AND JUDICIAL POSITIONS IN
THE FIFTH JUDICIAL DISTRICT
FILE NO. C9-85-1506

Dear Justice Peterson:

It was truly an honor and a pleasure to visit with you on September 6 in your office. Crossing over the imagined boundaries between the legislature and the court was a journey filled with anticipation, but it led to a discovery that we are really only physically separated from one another.

In our conversation, I failed to mention my discussion with Senator Randy Peterson, author of MSA 2.722, Subd. (a) (1985). Senator Peterson assured me that the language was not intended to deny other parts of Minnesota access to justices, and that there are extenuating circumstances which are not outlined in that legislative directive. It was not his intent that Anoka County gain at the expense of justice elsewhere.

In my review of the copies of resolutions and letters sent to you by the people of the 5th Judicial District, I concur with their reasoning as to why our judicial positions should not be left vacant.

However, in addition to those reasons, I would ask the consideration of an additional reason for retaining judicial positions in southwest Minnesota that is not mentioned nor is this factor easily quantifiable. Much of rural Minnesota, and particularly southwest Minnesota, is experiencing an economic crisis that is

COMMITTEES • Vice-Chairman, Transportation • Agriculture and Natural Resources • Public Utilities and State Regulated Industries • Veterans Affairs and General Legislation • Chairman, Subcommittee on Veterans Affairs

Justice Peterson
Page 2
September 6, 1985

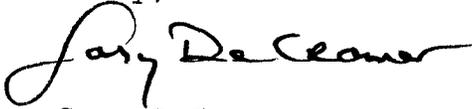
dramatically altering the social fabric of our regional community.

The collapse of farm credit, the increasing number of failures of small businesses, banks, and farms, the displacement of hundreds and hundreds of farm families, and the lack of federal policy to address this catastrophe, will create an increased need for courts to be present to provide neutral arbitration for those petitioning for remedies of equity.

I plead with you and your fellow justices to take into account the considerations raised by those who have written to you, those who will speak at the hearing in New Ulm, and the further consideration that the loss of district court justices in the 5th district would be most untimely given the economic and social circumstances we are now experiencing and expect to worsen for those of us who are members of the southwest Minnesota community.

Again, I thank you for being so gracious with your time, and I urge your favorable consideration of this plea.

Truly,



Gary DeCramer
State Senator

GDC/sb

cc Judge Mann
B.J. Vander Kooi

Vander Kooi Law Offices, P.A.

Attorneys At Law
127 E. Main, P.O. Box 116

Luverne, Minnesota 56156-0116

(507) 283-9546

Benjamin Vander Kooi, Jr.
Douglas E. Eisma

September 4, 1985

Edgerton Office
816 Main Street
(507) 442-6561
Wednesday
11:00 to 5:00

APPELLATE COURT
FILED

SEP 4 1985

WAYNE TSCHIMPERIE
CLERK

The Honorable C. Donald Peterson
Senior Associate Justice
Minnesota Supreme Court
c/o Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

RE: PUBLIC HEARING ON VACANCIES AND JUDICIAL POSITIONS IN
THE FIFTH JUDICIAL DISTRICT
FILE NO. C9-85-1506

Dear Justice Peterson:

Enclosed kindly find a Resolution of the Rock County Bar Association which has been signed by all six members of the association. We ask that you consider our Resolution and make it part of the record to be transmitted to the Chief Justice pursuant to MSA §2.722, subd. 1(a) (1985).

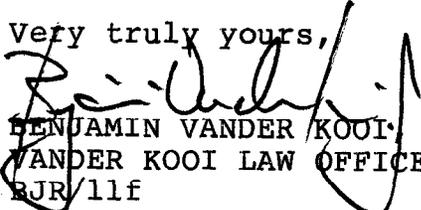
I strongly endorse the position of the Rock County Bar Association on the issue of retaining the judicial positions in the Fifth Judicial District. Rock County is one of the few counties in the state of Minnesota which does not have a resident judge. Instead, we rely on periodic visits by judges who have chambers in Pipestone, Worthington, and Windom. We experience firsthand the delays and extra costs associated with a practice which requires frequent trips of up to thirty (30) miles for the signing of documents and the conducting of emergency hearings.

The judicial positions under review by the Court do not directly affect Rock County. However, the transfer of judicial positions from Southwestern Minnesota to other areas of the state will undoubtedly affect the way the bench and bar operates in Rock County.

I do not intend to present oral argument at the hearing to be held on September 13, 1985. However, please do not construe my absence to mean that I am not interested in this very important issue. To the contrary, I join with other attorneys in Rock County and elsewhere in the Fifth Judicial District in favoring the continuation of both judicial positions to be vacated by Judge L. J. Irvine and Judge Walter H. Mann.

If you have questions, please feel free to contact my office.

Very truly yours,


BENJAMIN VANDER KOOI, JR.
VANDER KOOI LAW OFFICES, P. A.

RJR/llf
Enclosure

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

In re Public Hearing on
Vacancies in Judicial
Positions in the
Fifth Judicial District

RESOLUTION OF ROCK COUNTY
BAR ASSOCIATION

The Rock County Bar Association, having met on Tuesday, September 3, 1985, passed the following resolution:

WHEREAS, The Minnesota Supreme Court has issued its Order dated August 8, 1985, pursuant to the provisions of MSA §2.722, subd. 1(a) (1985), regarding the judicial vacancies in the Fifth Judicial District which will occur as a consequence of the retirement of Judge L. J. Irvine and Judge Walter H. Mann; and

WHEREAS, the undersigned individuals believe that it would be in the best interest of the people of Rock County, the Fifth Judicial District, and the entire state of Minnesota to continue both judicial positions which will be vacated before the end of 1985, for the following reasons:

1. We believe that every county in Minnesota should have at least one resident judge; if either or both of the judicial positions are transferred or abolished, there would be less likelihood that Rock County will ever receive a resident judge.

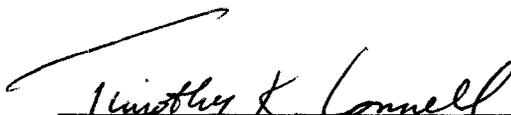
2. We believe that the Fifth Judicial District should continue to have five (5) district court judges, which is the number of district court judges recommended by the Minnesota Weighted Case Load Analysis. If either or both of the judicial positions is transferred or abolished, there will be fewer than five (5) district court judges in the Fifth Judicial District.
3. We believe that the Minnesota Weighted Case Load Analysis Study is seriously flawed, in that it fails to take into consideration the following judicial functions mandated by statute which require a resident judge:
 - A. Domestic Abuse Complaints
 - B. Commitments
 - C. Abortion Consents
 - D. Arrest Warrants requiring immediate court appearances
 - E. Juvenile Detention Hearings
 - F. Search Warrants
 - G. Restraining Orders
4. We believe that the Minnesota Weighted Case Load Analysis Study is flawed because it does not take into consideration travel expenses and time loss for law enforcement, members of the bar, their clients and witnesses in the scheduling of court proceedings in a rural district such as the Fifth Judicial District.
5. We believe that our clients will suffer delays and additional costs if either or both of the judicial positions are vacated.

WHEREAS, all six (6) members of the Rock County Bar Association are in favor of the continuation of both judicial positions currently held by Judge L. J. Irvine and Judge Walter H. Mann,

NOW THEREFORE, it is resolved by the undersigned members of the Rock County Bar Association that we are unanimously in favor of continuing both judicial positions under review by the

Minnesota Supreme Court and that a copy of this Resolution be sent to Justice C. Donald Peterson, Senior Associate Justice of the Minnesota Supreme Court, on or before the date of the hearing in this matter scheduled for Friday, September 13, 1985, in New Ulm, Minnesota.

IN WITNESS WHEREOF, the undersigned members of the Rock County Bar Association have set their hands on this 3rd day of September, 1985.


TIMOTHY K. CONNELL
SKEWES, KLOSTERBUER & CONNELL
129 E. MAIN
LIVERNE, MINNESOTA 56156


MORT B. SKEWES
SKEWES, KLOSTERBUER & CONNELL
129 E. MAIN
LIVERNE, MINNESOTA 56156


DOUGLAS E. ESMA
VANDER KOOI LAW OFFICES, P. A.
127 E. MAIN, P. O. BOX 116
LIVERNE, MINNESOTA 56156


WALTER A. TOFTELAND
ATTORNEY AT LAW
109 N. CEDAR
LIVERNE, MINNESOTA 56156


DONALD R. KLOSTERBUER
SKEWES, KLOSTERBUER & CONNELL
129 E. MAIN
LIVERNE, MINNESOTA 56156


BENJAMIN VANDER KOOI, JR.
VANDER KOOI LAW OFFICES, P. A.
127 E. MAIN, P. O. BOX 116
LIVERNE, MINNESOTA 56156

APPELLATE COURTS
FILED

SEP 16 1985

522 East 11th Street
Blue Earth, MN 56013
September 11, 1985

WAYNE TSCHIMPEL
CLERK

Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

C9-85-1506

Dear Clerk of Court:

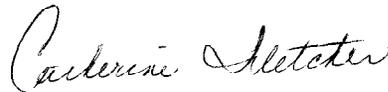
I would like to encourage the Supreme Court to approve the replacement of the two retiring judges in the Fifth Judicial District of Minnesota.

It is my understanding that the present positions may be deemed unnecessary based on the weighted case load study. The report clearly indicates that 4.5 District Judges are needed. It goes on to indicate, however, that only eleven County Judges may be needed. Within the next two years two County Judges will retire. I would hope you would maintain the full contingency of District Judges at this time with an eye to cutting the County Judges in the future through retirement if you feel the need exists to have fewer judges.

I encourage you to keep Judges in the rural area. Time and travel, and subsequently the costs of such, are a very real burden to our already severely depressed rural area. In the twin cities, a judge can be readily found to sign an order or conduct an initial appearance. Here in the Fifth Judicial District it is sometimes necessary to travel over an hour in order to find a judge and then spend precious hours waiting to be heard. This situation would even be worse without the two District Judges.

This is a matter of the gravest concern for rural Minnesota. Thank you for your attention.

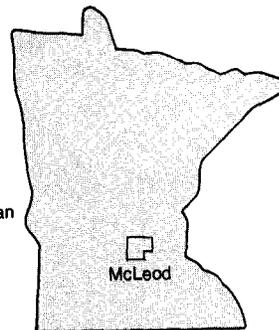
Sincerely,



Catherine M. Fletcher

COUNTY OF McLEOD

830 11th Street East
Glencoe, Minnesota 55336



MILO H. KUBASCH
1st District
Phone (612) 485-2657
261 Sherman Ave. E, Box 248
Winsted, 55395

GRANT G. KNUTSON
3rd District
Phone (612) 587-9108
Route 4
Hutchinson, 55350

LAWRENCE A. WENDORFF, Chairman
5th District
Phone (612) 587-4079
Rt. 3, Box 212
Hutchinson, 55350

MELVIN H. DOSE
2nd District
Phone (612) 864-3304
Rt. 2, Box 180
Glencoe, 55336

HOWARD CHRISTENSEN, Vice Chairman
4th District
Phone (612) 587-4788
Rt. 1, Box 247
Hutchinson 55350

GENE REDDEMANN
Executive Secretary
Phone (612) 864-5551
Courthouse
Glencoe, Minnesota 55336

October 7, 1985

OFFICE OF
APPELLATE COURTS
FILED

OCT 25 1985

WAYNE TSCHIMPEL
CLERK

Sue K. Dostal, Administrator
Minnesota Supreme Court
40 North Milton St. - Suite 201
St. Paul, MN 55104

Dear Ms. Dostal:

The County received a copy of your Supreme Court Order C9-85-1506.

After reviewing the Order the Board directed this office to convey their concern about any economic impact the Order may have on counties and the need to levy additional funds to support increased administrative costs of additional judgeships.

Sincerely,

Gene Reddemann
County Coordinator

GR/nm



County Court District E
Fifth Judicial District
State of Minnesota

JUDGE DAVID E. CHRISTENSEN

Pipestone County Courthouse
P.O. Box 472
Pipestone, Minnesota 56164
507-825-3626

JUDGE JEFFREY L. FLYNN

Nobles County Courthouse
P.O. Box 547
Worthington, Minnesota 56187
507-376-6173

JUDGE JOHN D. HOLT

Murray County Courthouse
Slayton, Minnesota 56172
507-836-6163

August 23, 1985

Honorable C. Donald Peterson
Senior Associate Justice
c/o Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

RE: Fifth Judicial District vacancies

Dear Judge Peterson:

Pursuant to M.S. 2.722 and your Order of August 8, 1985 I am herewith submitting my opinions in writing in regard to the above matter. I would note the following:

1. The weighted caseload study is reasonably accurate based upon my experience in Pipestone, Rock and Nobles counties.
2. The Fifth Judicial District can provide good judicial service with fewer judges.
3. The number of judicial positions to be vacated in the Fifth Judicial District should not exceed three. Although the weighted caseload study indicates the number of judges could be reduced by five the extensive travel involved with such a reduction would strain the system.
4. The judicial surplus within the Fifth Judicial District exists primarily in the western portion of the district.
5. If the number of judges in the Fifth Judicial District is to be reduced the vacancies should occur in counties which have more than one judge with chambers in the county.

Murray, Nobles, Pipestone, and Rock Counties

6. Wherever possible every county should have one judge with chambers in the county. This facilitates signing the following:

- a. Domestic abuse orders
- b. Commitments
- c. Warrants
- d. Juvenile detention orders
- e. Search warrants
- f. Temporary restraining orders

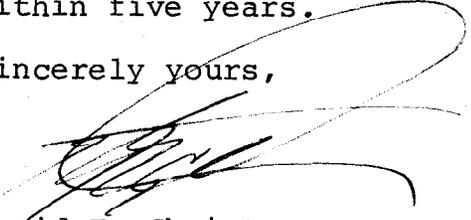
7. Both of the present vacancies occur in counties which have one or more judges with chambers in the county.

8. The most likely vacancies to occur in the Fifth Judicial District within the next two years after the present vacancies will be the positions in Jackson and Murray counties as those judges are nearing retirement age. Neither of those counties will have another judge with chambers in the county.

9. Although reduction in the total number of judges in the Fifth Judicial District may result in a reduction of expense to the State the net result of such a reduction may be that the cost to the counties of the district will be increased. The present County Court system within the Fifth Judicial District operates with no law clerks, few full-time court reporters and only part-time secretarial services provided by the clerk of court's office. To the extent that the County Court judges assume additional duties they will have to also acquire the additional personnel to assist in handling such duties.

Based upon the foregoing, I would recommend that the two positions under consideration at the present time be vacated and would further recommend that at such time as the positions in Murray and Jackson counties become vacant that they should be filled. Consideration may be given to vacating a position in Cottonwood County at such time as a vacancy occurs there. That will occur within five years.

Sincerely yours,



David E. Christensen
Judge of County Court

DEC/jc

RESOLUTION

WHEREAS it has been brought to the attention of the Martin County Board of Commissioners that the Honorable L. J. Irvine will retire from his position as District Judge with Chambers in Martin County on or about October 31, 1985, and

WHEREAS it has also been brought to the attention of the Martin County Board of Commissioners that the Supreme Court of the State of Minnesota will, on September 13, 1985, receive testimony at a public hearing to determine whether or not a successor should be named to the Honorable L. J. Irvine, and

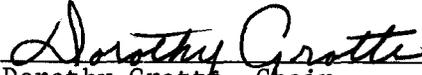
WHEREAS in the opinion of the Martin County Board of Commissioners it is of paramount importance that the position of District Judge in Martin County be filled in order to guarantee a just and speedy disposition of all claims and controversies brought by the citizens of the Fifth Judicial District, and

WHEREAS in the opinion of the Martin County Board of Commissioners failure to appoint a successor to the Honorable L. J. Irvine would result in excessive delay in the adjudication of causes before the District Court in Martin County,

NOW THEREFORE BE IT RESOLVED:

That the Martin County Board of Commissioners supports the appointment of a successor to the Honorable L. J. Irvine, Judge of the District Court, and opposes the elimination or transfer of this judicial position.

Dated: September 3, 1985


Dorothy Grotte, Chair
MARTIN COUNTY BOARD OF COMMISSIONERS

ATTEST:


Robert J. Katzenberger

MARTIN COUNTY AUDITOR

Dated: September 3, 1985

David M. Jennings
Speaker of the House

463 State Office Building
St. Paul, Minnesota 55155
Telephone: 612-296-3240



Minnesota House of Representatives

August 5, 1985

Honorable Douglas K. Amdahl
Chief Justice
Supreme Court of Minnesota
230 State Capitol
St. Paul, MN 55155

Dear Chief Justice Amdahl:

It seems that the district judgeship in Fairmont, Minnesota, will be the first one to come open under the law we just passed allowing the Supreme Court to decide whether such vacancies are to be filled, terminated or relocated. As I understand the procedure, there will be a hearing within the next few weeks and a subsequent decision by the Court.

The purpose of this letter is simply to advise you of my belief that the vacancy should be filled and to tell you of my strong belief in the need to maintain district court chambers in Fairmont. I've discussed the situation, at some length, with Judge Irvine, with other area district judges, and with the local bar association. I'm convinced the need is real and I hope the Court will act favorably on replacing Judge Irvine and maintaining the present judgeship.

Sincerely,

A handwritten signature in cursive script that reads "David M. Jennings".

David M. Jennings
Speaker of the House

DMJ:jd

cc: Steve Gabrielson

PUBLIC HEARING ON JUDICIAL VACANCY

5th

Appellate No: C9-85-1506

Date of Hearing: 9/13/85

10:00 am.

Brown County Courthouse

Name	Date Written Summary filed	Request Oral Presentation	
		Yes	No
Hon. L. J. Irvine	8-20-85	X	
State Representative (29B) Henry J. Kalis	8-21-85	X	
Robert R. Maunu, Esq.	8-22-85		X
<i>Calvin P. Johnson</i>	<i>8-22-85</i>	X	
Hon. HARVEY A. HOLTAN	8-26-85	X	
Ieland Bush	8-29-85		X
Patrick Leary	8-29-85		X
Hon. Charles C. Johnson	9-3-85	X	
Tom Tourville	9-5-85		X
D. Gerald Wilhelm	9-5-85	X	
Roger H. Hippert	9-6-85	X	
Richard D. Berens	9-6-85	X	
C. Allen Dosland	9-6-85	X	
J. Brian O'Leary	9-6-85		X
Paul Stoneberg	9-6-85		X
Stephen D. Gabrielson	9-9-85		X
Hon. Walter H. Mann	9-6-85	X	
Terry M. Dempsey	9-10-85		X
Andrew E. Doom	9-10-85		X
Hon. George Marshall	9-11-85		X
Ardis Andert	9-11-85		X
Frank Moorse	9-6-85		X
Gary DeCramer	9-6-85		X
Hon. Noah S. Rosenbloom	9-6-85		X
Benjamin Vander Kooi, Jr.	9-4-85		X
Catherine M. Fletcher	9-16-85		X

SUPREME COURT
NEW ULM, MINNESOTA
SEPTEMBER 13, 1985, 10:00 A.M.

C9-85-1506

State

Dale W. Good
Information Systems Director

Representing

Office of State Court
Administrator

Judges

Judge L. J. Irvine
Judge of District Court
Faribault (Rice County)

Representing

--

Judge Walter H. Mann
Judge of District Court
Mankato (Blue Earth County)

--

Judge Harvey A. Holtan
Judge of District Court
Windom (Cottonwood County)

Fifth Judicial District Judges

Judge Charles C. Johnson
Judge of County Court
Mankato (Blue Earth County)

Fifth Judicial District Judges

Public

Representative Henry J. Kalis
Walters (Faribault County)

Representing

District 29B - Blue Earth,
Faribault, Freeborn, Martin
Waseca Counties

Attorneys

D. Gerald Wilhelm
Martin County Attorney

Representing

17th District Prosecutors
Fifth District County
Attorneys Assn.

Roger H. Hippert
New Ulm (Brown County)

--

Richard D. Berens
Fairmont (Martin County)

17th District Bar Assn.

C. Allen Dosland
New Ulm (Brown County)

9th District Bar Assn.

Calvin P. Johnson
Mankato (Blue Earth County)

5th District Public Defenders

No Oral Presentation Requested

<u>Name</u>	<u>Representing</u>
1. David M. Jennings Speaker of House of Representatives Truman (Martin County)	District 29A
2. Hon. David E. Christensen Judge of County Court (Pipestone County)	--
3. Stephen D. Gabrielson, Esq. Fairmont (Martin County)	Martin County Bar Assn.
4. Paul Stoneberg, Esq. Marshall (Lyon County)	Lyon-Lincoln County Bar Assn.
5. Tom Tourville Marshall (Lyon County)	Marshall Area Chamber of Commerce
6. Robert R. Maun W , Esq. (Pipestone County)	--
7. Leland Bush, Esq. Tyler (Lincoln County)	--
8. Patrick J. Leary, Esq. Marshall (Lyon County)	--
9. J. Brian O'Leary, Esq. Springfield (Brown County)	Ninth District Bar Assn.
10. Senator ^{Representative} Terry M. Dempsey, Esq. New Ulm (Brown County)	District 23A - Brown, Cottonwood, Redwood
11. Andrew E. Doom State Parole and Probation Agent Marshall (Lyon County)	--
12. Honorable George A. Marshall Judge of County Court Marshall (Lyon County)	--
13. Ardis Andert Southwest Women's Shelter Marshall (Lyon County)	--
14. Hon. Noah Rosenbloom New Ulm	
15. Senator Gary DeCramer	District 27
16. Frank Morse Region III North Welfare Dept Marshall	

(over)

17. Benjamin Vander Kooi, Esq
Luverne, Minn.

18. Catherine M Fletcher
Blue Earth